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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 BARRY ROSEN,
15 Plaintiff,
16 v.
17 EBAY, INC. and DOES 1 through 10,
18 Defendants.

Case No. CV13-06801 MWF (Ex)

**DEFENDANT EBAY'S
STATEMENT OF GENUINE
DISPUTES IN RESPONSE TO
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Date: Nov. 3, 2014
Time: 10:00AM
Courtroom: 1600

Hon. Michael W. Fitzgerald

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28 EBAY'S STATEMENT OF GENUINE
DISPUTES IN RESPONSE TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

1 In opposition to Plaintiff Barry Rosen's Motion for Partial Summary
 2 Judgment regarding eBay's purported liability for copyright infringement, pursuant
 3 to Federal Rules of Civil Procedure Rule 56 and Local Rule 56-2, Defendant eBay
 4 Inc. ("eBay") respectfully submits this Statement of Genuine Disputes in response to
 5 Plaintiff's Statement of Uncontroverted Facts and Conclusions of Law
 6 ("56.1 Statement").

Purported Uncontroverted Fact	eBay's Response
<p>8 1. Rosen personally took the 9 photographs that are at issue in this 10 case that are listed in Exhibit 1 to 11 the Second Amended Complaint 12 filed in this action ("Photographs"). 13 Rosen is the owner of all right, title, 14 and interest to each of the 15 copyrights in the Photographs. 16 Rosen Decl., ¶ 2.</p>	<p>Disputed. Plaintiff has failed to provide any evidence of his ownership of the copyright registrations for the 39 works at issue in this litigation. Instead, Plaintiff provides blanket copyright registrations for ambiguously titled works and fails to provide evidence that the copyright registrations he attaches to the Rosen Decl. Ex. 1 relate to or in fact cover all of the allegedly infringed Photographs. Despite eBay's requests to produce or procure deposit copies of the photo(s) submitted to the Copyright Office with each registration, Plaintiff has been unwilling or unable to do so. Joint Stipulation re: eBay's Motion to Compel Testimony and Documents from Plaintiff, July 15, 2014 [Dkt. 34-1]. Consequently,</p>

1 Purported Uncontroverted Fact	eBay's Response
	Plaintiff has failed to prove ownership of registered copyrights.
2. The Photographs are registered with the Copyright Office under numerous registration numbers. Rosen Decl., ¶ 3. Exhibit 1.	Disputed. Please see eBay's response to ¶ 1.
3. In creating the Photographs, Rosen personally arranged all aspects of the photo shoots, including deciding on the makeup artist, style of makeup, style of hair, clothing, props, and the time and location of the photo shoot. Rosen also selected the lighting, film, lens, shutter speed, aperture, and exact moment that the Photographs would be taken, and Rosen took each Photograph. The photo-shoots were also initiated by Rosen and were not done at the direction or commission by any other parties. As such, these Photographs are all Rosen's original works of authorship. Rosen Decl., ¶	Disputed because paragraph 3 asserts facts not in evidence. Disputed. Plaintiff cannot use a declaration submitted as part of a motion for summary judgment to assert new facts that he did not remember at his deposition. <i>Morris v. Young</i> , 925 F. Supp. 2d 1078, 1085-86 (C.D. Cal. 2013); <i>Rosen v. Amazon.com, Inc.</i> , No. CV12-10413 (C.D. Cal.) Order Denying Plaintiff Barry Rosen's Motion for Partial Summary Judgment at 3 [Dkt 71] (striking Rosen's supplemental declaration on the ground that it was a "blatant attempt to 're-do' his deposition without providing Amazon an

Purported Uncontroverted Fact	eBay's Response
4.	opportunity for cross-examination"). <i>See also</i> Deposition of Plaintiff Barry Rosen, dated Aug. 18, 2014 ("Aug. 18 Rosen Dep."), annexed as Exhibit ("Ex.") A to the Declaration of Randi W. Singer, dated Sept. 5, 2014 ("Singer SJ Decl.") at 11:1-13:5, 12:1-18.
4. Rosen has never authorized the making of any of the infringing photographic prints of the Photographs involved in this case. Thus, the photographic prints of Rosen's Photographs that were offered for sale were not authorized by Rosen and were not subject to the "first sale" doctrine. Rosen Decl., ¶ 5.	Disputed. At his deposition, Plaintiff was unable to explain how third parties were able to obtain copies of allegedly unpublished photographs (including copies autographed by the subject of the photo) if he never authorized such copies or distributed the photographs. <i>See</i> Deposition of Barry Rosen, dated Aug. 19, 2014 ("Aug. 19 Rosen Dep."), annexed as Ex. B to the Singer SJ Decl. at 219:19-220:12; Defendant eBay's Separate Statement of Uncontroverted Facts and Conclusions of Law, dated Sept. 5, 2014 ("eBay's 56-1") ¶ 109. Further disputed because paragraph 4 purports to set out a legal conclusion.

Purported Uncontroverted Fact	eBay's Response
<p>5. While some, but not all, of Rosen's photographs contained in magazines may have been authorized by Rosen for use in the magazines, Rosen has never authorized the making of the copies of such Works for the purpose of reselling the magazines or pictures of the magazines on eBay. Rosen Decl., ¶ 6.</p>	<p>Disputed. Plaintiff acknowledged that the images at issue in this lawsuit that appeared in magazines were licensed. <i>See</i> eBay 56-1 ¶ 100.</p> <p><i>See</i> Declaration of Larry Taylor in Support of eBay's Motion for Summary Judgment, dated Sept. 4, 2014 ("Taylor SJ Decl.") Ex. H.</p>
<p>6. Rosen never gave permission to eBay or the eBay users to make the copies of the Photographs to sell, to publicly display, or in any way distribute or offer for sale copies of Rosen's Photographs on eBay.</p> <p>Rosen Decl., ¶ 7.</p>	<p>Disputed that eBay copied, displayed, distributed or offered to sell copies of Rosen's Photographs. eBay does not sell products on its website but instead enables users and merchants to offer their inventory. <i>See</i> eBay's 56-1 ¶ 13; Declaration of Lynda Talgo in Support of Defendant eBay's Motion for Summary Judgment ("Talgo SJ Decl."), dated Sept. 4, 2014, ¶ 2.</p> <p>Further disputed as paragraph 6 implies that permission was required.</p>
<p>7. eBay's listings are generally infringing in two separate ways.</p>	<p>Disputed because paragraph 7 purports to set out unsupported legal conclusions</p>

Purported Uncontroverted Fact	eBay's Response
<p>First, with respect to the listing of prints of Rosen’s photographs, none of such prints were ever authorized to be made by Rosen or to sold or publicly displayed or distributed. Because eBay requires its users to upload copies of what they are selling, users make unauthorized electronic copies of these prints, which are uploaded to eBay’s servers. Even if a listing for an authorized copy of one of Rosen’s photographs is taken down by eBay, eBay does not, as a matter of course, delete from its system the actual infringing image file. Such file is accessible, and accessed, by search engines, resulting in additional infringements. During discovery, Rosen requested eBay to produce documents showing when it actually removed the infringing listing as well as the infringing image files. eBay did not produce responsive documents reflecting</p>	<p>which courts do not consider on a motion for summary judgment. <i>See Andrews Farms v. Calcot, Ltd.</i>, 693 F. Supp. 2d 1154, 1167 (E.D. Cal. 2010) (refusing to consider plaintiff’s statement of “fact” on summary judgment because it was a “legal conclusion that [was] unsupported by legal authority or analysis”).</p>
	<p>Disputed because Plaintiff provides no evidentiary support for the conclusory statement that eBay “requires its users to upload copies of what they are selling.” eBay does not require users to upload copies of what they are selling; rather, eBay requires users to include at least one photograph of the item they are offering for sale in their listings. <i>See eBay</i> 56-1 ¶¶ 66-67.</p>
	<p>Disputed because statements that eBay does not delete image files from its systems and that certain, unspecified, allegedly infringing image files were accessible until Dec. 16, 2013 are conclusory and lacking any evidentiary</p>

Purported Uncontroverted Fact	eBay's Response
<p>this. eBay only removed the infringing image files after the Second Amended Complaint was filed in this case, which was filed on December 16, 2013. Thus, these infringing image files were accessible until at least December 16, 2013, months after Rosen gave eBay notice of the infringements.</p> <p>Rosen Decl., ¶ 9.</p>	<p>foundation. <i>See</i> eBay 56-1 ¶¶ 76-79. Plaintiff could have been accessing cached copies of the no longer active listing. <i>See</i> Declaration of Randy Spickler in Opposition to Plaintiff Barry Rosen's Motion for Summary Judgment dated October 2, 2014 ("Spickler Opp. Decl."), at ¶¶ 7, 9.</p> <p>Disputed because Plaintiff did not specifically report image URLs until after the Second Amended Complaint was filed. <i>See</i> eBay 56-1 ¶ 26; Taylor SJ Decl. ¶ 26.</p>
	<p>Disputed as to the conclusory assumption that files on eBay's systems are "accessible, and accessed, by search engines, resulting in additional infringements" because Plaintiff provides no evidentiary support for this supposition or that the images have been accessed by anyone other than Plaintiff.</p>
	<p>Disputed further because Plaintiff provides no evidentiary support for the conclusory statement that eBay failed to</p>

Purported Uncontroverted Fact	eBay's Response
	<p>produce responsive documents reflecting the dates that certain listings at issue in this lawsuit were removed from eBay's website. Exhibit B to eBay's Supplemental Responses to Plaintiff's First Set of Interrogatories provides the dates upon which the listings at issue in this lawsuit ended. <i>See Declaration of Cara Baldwin in Support of Defendant eBay's Motion for Summary Judgment ("Baldwin SJ Decl."), dated Sept. 4, 2014, Exhibit K.</i></p>
<p>8. Some of the listings were for the sale of original copies of magazines. In some, but not all cases, Rosen had authorized the magazines to use copies of Rosen's photographs in the magazines (but for no other purpose). Because of eBay's photograph policy, sellers of magazines containing Rosen's photographs were required by eBay to also make copies of the magazines they were selling, and</p>	<p>Undisputed that certain listings reported by Plaintiff were for the sale of original copies of magazines.</p> <p>Disputed that "in some, but not all cases, Rosen had authorized the magazines to use copies of Rosen's photographs in the magazines (but for no other purpose.)."</p> <p>At his deposition, Plaintiff could not recall the terms of the license agreements. <i>See e.g. Rosen Dep. annexed as Ex. A to the Singer SJ Decl. at 49:3-50:14</i></p> <p>Plaintiff has not previously alleged that</p>

Purported Uncontroverted Fact	eBay's Response
<p>sellers made unauthorized copies of Rosen's photographs and posted them on eBay. The copying, public display, and distribution of the copies of the photographs from the magazines were never authorized by Rosen and infringed Rosen's copyrights. Thus, unless and until eBay removed access to the infringing image files (not just access to the listings), such unauthorized images could be, and were, copied by others, publicly displayed, and distributed. Rosen Decl., ¶ 9.</p>	<p>any images at issue appearing in magazines were unauthorized. <i>See</i> eBay 56-1 ¶ 100; Singer SJ Decl., Ex. B Aug. 19 Rosen Dep., at 171:16-172:2, 203:17-204:21, 206:5-207:2, 208:12-209:7, 220:13- 221:11.</p> <p>Disputed that "sellers of magazines containing Rosen's photographs were required by eBay to also make copies of the magazines they were selling." eBay does not require users to upload copies of what they are selling; rather, eBay requires users to include at least one photograph of the item they are offering for sale in their listings. <i>See</i> eBay 56-1 ¶¶ 66-67.</p> <p>Disputed that images "could be, and were, copied by others, publicly displayed and distributed," because Plaintiff has provided no evidence to support this statement.</p>
<p>9. In 2003, Rosen had a discussion by phone and sent an email about the posting of photos from magazines</p>	<p>Disputed for lack of evidentiary foundation. Rosen Decl. Exhibit 174 does not appear to contain the email referenced</p>

Purported Uncontroverted Fact	eBay's Response
Rosen had licensed some of Rosen's images to eBay's senior IP counsel Michael Richter, warning eBay that the unauthorized use of copies of Rosen's photographs to sell the magazines on eBay was a clear violation of Rosen's exclusive rights as a copyright owner. Rosen Decl., ¶ 10, Exhibit 174.	in paragraph 9. There is no evidence of the conversation alleged, which is far outside the statute of limitations in any event.
10. In 2013, after Rosen had sent NOCI's to eBay and eBay had refused to remove listings for magazines containing Rosen's photographs, which listings included unauthorized copies of Rosen's photographs, Rosen specifically advised Larry Taylor, eBay's "legal specialist," that the sellers did not have the right to use copies of Rosen's photographs. In an email dated September 4, 2013, Rosen stated to Mr. Taylor: In response to your inquiry, pursuant to 17 USC § 109(c), the owner of a particular copy lawfully made may only display the item directly or by the	Undisputed that Plaintiff sent an email expressing his opinion regarding certain listings. Disputed because paragraph 10 purports to set out unsupported legal conclusions which courts do not consider on a motion for summary judgment. <i>See Andrews Farms</i> , 693 F. Supp. 2d at 1167 (refusing to consider plaintiff's statement of "fact" on summary judgment because it was a "a legal conclusion that [was] unsupported by legal authority or analysis").

Purported Uncontroverted Fact	eBay's Response
<p>projection of no more than one image at a time, to viewers present at the place where the copy is located. As these listing all involve copies of Rosen's works that have been made and/or posted onto eBay without Rosen's express authorization, and since such copies are beyond the scope of what is allowed under the law, all such copies are fully unauthorized and are therefore copyright infringements.</p> <p>(Rosen Decl., ¶ 10, Exhibit 96.)</p>	
<p>11.Rosen repeated this to Mr. Taylor in 12 Rosen's 2nd email of September 4, 13 2013, in which Rosen stated:</p> <p>14 Your assessment is not exactly correct, 15 but it is close. The situation is that the 16 sellers can sell/resell the items under 17 first sale doctrine as they are lawfully 18 made items. However, under 17 USC § 19 109(c), they cannot make copies of 20 Rosen's photographic works from said 21 items and post them onto eBay as part 22 of sales listings without Rosen's 23 express authorization. Because they 24 have not abided by their obligations 25 under 17 USC § 109(c) and since such 26 copies are fully beyond the scope of 27 what is allowed under the law, all such 28 copies of Rosen's works made by the sellers and posted on eBay are fully unauthorized and are therefore copyright infringements and have been reported to eBay as such.</p>	<p>Disputed. Please see eBay's response to ¶ 10.</p>

Purported Uncontroverted Fact	eBay's Response
(Rosen Decl., ¶ 11, Exhibit 97.)	
12. Thus, eBay was fully aware that its users were infringing Rosen's photographs by making unauthorized copies of Rosen's photographs and uploading them to eBay in attempting to sell magazines containing Rosen's images. Rosen Decl., ¶ 13.	Disputed because paragraph 12 purports to set out unsupported legal conclusions which courts do not consider on a motion for summary judgment. <i>See Andrews Farms</i> , 693 F. Supp. 2d at 1167 (refusing to consider plaintiff's statement of "fact" on summary judgment because it was a "a legal conclusion that [was] unsupported by legal authority or analysis").
	Disputed because it purports to state what eBay was or was not aware of at any given point in time. <i>Braxton-Secret v. A.H. Robins Co.</i> , 769 F.2d 528, 531 (9th Cir. 1985) ("Questions involving a person's state of mind, e.g., whether a party knew or should have known of a particular condition, are generally factual issues inappropriate for resolution by summary judgment.").
13. eBay was made fully aware of the failure to remove images with Rosen's 2007 complaint. Rosen	Disputed because there is no evidence that the 2007 lawsuit involved any of the images at issue and because a complaint

Purported Uncontroverted Fact	eBay's Response
Decl., ¶ 14, Exhibit 46.	from 2007 is not evidence of knowledge in the instant suit.
14.eBay had continually failed to remove the image files from its servers after it receives a NOCI's [sic] even after being made aware of the issue on multiple occasions and in the 2007 complaint. Rosen Decl., ¶ 15.	Disputed because Plaintiff fails to provide any evidence to support the statement made in paragraph 14. Further disputed because Plaintiff never raised this issue in any of the NOCIs he sent to the VeRO Team or in the original complaint filed in this action. Disputed because there is no evidence that the 2007 lawsuit involved any of the images at issue and because a complaint from 2007 is not evidence of knowledge in the instant suit.
15.Even after it was made aware of its continuing failure to remove images after receiving an NOCI in the 2nd amended complaint, eBay still failed to remove images for weeks. Rosen Decl., ¶ 16, Exhibits 174 and 175	Disputed because Plaintiff fails to provide any evidence to support the statement made in paragraph 15; there is no evidence that the image appearing in Rosen Decl. Exhibit 174 consists of or contains any of the images at issue in this lawsuit. The exhibits cited are screenshots of images dated months after the period of time at issue in this lawsuit, and do not show that eBay was placed on

Purported Uncontroverted Fact	eBay's Response
	<p>notice of any infringing material or activity.</p> <p>Disputed further because Rosen Decl. Exhibit 175 appears to be a screenshot of a signed photograph of Lana Parilla—an image and subject that is not part of the instant lawsuit.</p>
<p>16. The images sizes that eBay requires users to post are of a size that is much bigger than is necessary for the intended purpose. eBay requires that each listing contain at least one photo and that the photos be at least 500 pixels on the long dimension (about 7 inches) up to 1600 pixels (about 22 inches) or it will not allow the listing to be posted on its website. Rosen has also personally encountered this issue when Rosen tried to post images smaller than required related to some surplus audio/video equipment that Rosen was selling on eBay. Rosen Decl., ¶ 17, Exhibit 105.</p>	<p>Disputed because Plaintiff provides no evidence to support the conclusory statement that eBay's requirements regarding image sizes requires users to post images "of a size that is much bigger than is necessary for the intended purpose." The purpose of eBay's <i>Picture policy</i> is to ensure that buyers on eBay have the opportunity to examine the products they are considering purchasing. eBay 56-1 ¶ 66.</p> <p>Further disputed because Plaintiff provides no evidence to support the statement that Plaintiff has "personally encountered this issue," and because Plaintiff does not make clear what "issue" is referenced.</p>

Purported Uncontroverted Fact	eBay's Response
	Dispute that 500 pixels is “about 7 inches” and that 1,600 pixels is “about 22 inches.” <i>See Spickler Opp. Decl.</i> ¶ 30-31; Declaration of Randy Spickler in Support of Defendant eBay’s Motion for Summary Judgment, dated Sept. 4, 2014 (“Spickler SJ Decl.”) ¶ 7.
17.eBay fails to take steps to protect posted images from being copied or downloaded, when it could easily do so. Declaration David Sterling.	Disputed. It is not possible to prevent an image from being copied and it is trivially easy to bypass any and all mechanisms used to attempt to limit copying, including by using screen shots. <i>See Spickler Opp. Decl.</i> ¶ 14. Further disputed because Plaintiff provides no evidentiary support for his characterization of any actions described in paragraph 17 as “easily” accomplished and is conclusory. The Declaration of David Sterling is not fact evidence and Mr. Sterling has no basis for concluding that eBay could “easily” do anything.
18.Once posted to eBay, images are available to the entire world and can be found by search engines such as	Disputed. Listings on eBay are public, but images may only be accessed if they are associated with a listing. <i>See Spickler</i>

Purported Uncontroverted Fact	eBay's Response
Google, etc. Rosen Decl., ¶ 19; exhibits 100, 145.	<p>Opp. Decl. ¶ 16.</p> <p>Further disputed because search engines access information from pages on eBay's website according to certain parameters set forth in eBay's domain. eBay can specify the general sort of information it allows search engines to obtain from its website, but in practice eBay cannot prevent a search engine from accessing information from its website, nor can it control what happens after the information is obtained from the site.</p> <p>Spickler Opp. Decl. ¶¶ 18-22.</p>
19.eBay has a policy called "images and text policy" wherein scans from catalogs or advertisements are not allowed. Scans of magazines would clearly fit into this policy. Rosen Decl., ¶ 20, Exhibit 151.	<p>Undisputed that eBay has an <i>Images and text</i> policy. eBay 56-1 ¶ 28.</p> <p>Disputed that "scans of magazines would clearly fit into this policy." See Deposition of Larry Taylor ("Taylor Dep."), dated Aug. 13, 2014, annexed as Ex. F to the Declaration of Randi Singer in Opposition to Plaintiff Barry Rosen's Motion for Summary Judgment, dated Oct. 3, 2014 ("Singer Opp. Decl.") at 281:20-282:19 (explaining in detail why</p>

Purported Uncontroverted Fact	eBay's Response
	scans of magazines clearly do not fit into this policy).
20. Such non-removed images have been used as part of the re-posting/re-listing of Rosen's Works. Rosen Decl., ¶ 21.	Disputed. Plaintiff provides no evidence to support the conclusory statement in ¶ 20.
21. When you click on the image in a listing, it opens up to display a very large photo. Rosen Decl., ¶ 22.	Disputed. Please see eBay's responses to ¶ 20.
22. eBay has failed to produce communications with sellers, including but not limited to communications about removed listings, warnings about infringing activities, communications about suspensions/terminations. Such communications are relevant to when eBay actually removed listings, implementation of DMCA procedures, including the implementation of 512(i) termination policy. eBay has only produced about 3-4 post notice	Disputed that eBay failed to comply with any of its discovery obligations in this litigation. eBay responded to each of Plaintiff's 803 demands for document production and produced thousands of pages of responsive documents. <i>See Singer Opp. Decl.</i> ¶¶ 2, 8. eBay also offered on more than one occasion to meet and confer concerning these responses, but Plaintiff never followed up. <i>Singer Opp. Decl.</i> ¶¶ 6, 9, 12. Plaintiff cannot now use his own lack of diligence to attempt to discredit eBay's discovery responses. <i>Cf. Brae Transp.</i> ,

1 Purported Uncontroverted Fact	eBay's Response
2 communications with sellers in this 3 case. Rosen Decl., ¶ 23, Exhibit 4 158. 5 6 7 8 9 10	<i>Inc. v. Coopers & Lybrand</i> , 790 F.2d 1439, 1443 (9th Cir. 1986) (“movant cannot complain if it fails to pursue discovery diligently before summary judgment.”). Further disputed because Plaintiff failed to file any Exhibit 158 to the Rosen Declaration.
11 23.eBay has failed to produce its 12 listings in dispute. These could have 13 been useful to determine exactly 14 when eBay actually removed 15 listings. Rosen Decl., ¶ 24. 16 17 18	Disputed. Please see eBay's response to ¶ 22. Further disputed because it is unclear what is meant in paragraph 23 by “its listings in dispute” or any basis for the statement that “[t]hese could have been useful.”
19 24.eBay has failed to produce logs 20 related to views of the listings. 21 Rosen Decl., ¶ 25; Declaration of 22 David Sterling.) 23 24 25 26 27	Disputed. Please see eBay's response to ¶ 22. Further disputed that log files exist or would show views of listings. Spickler Opp. Decl. ¶¶ 24-29.
28 25.eBay has represented in supplemental discovery responses that it has no image logs. This is likely not true as eBay would need	Disputed. Please see eBay's response to ¶¶ 22, 24. Further disputed because Plaintiff provides no evidence for the conclusory

Purported Uncontroverted Fact	eBay's Response
<p>these logs for their operations troubleshooting of operational issues. (See Declaration of David Sterling.)</p>	<p>and false statement in paragraph 25 alleging that certain statements made by eBay are untrue. eBay has accurately stated in response to Plaintiff's discovery requests that it does not maintain data relating to visits by individual users to particular image files stored on eBay's servers. <i>See</i> eBay's Supplemental Responses to Plaintiff's Second Demand for the Production of Documents, dated Aug. 18, 2014 annexed as Ex. H to the Singer Opp. Decl.; Spickler Opp. Decl. ¶¶ 24-29.</p>
<p>26. eBay has failed to produce all 512(i) logs or other notes on actions taken against sellers including warnings, suspensions and terminations. Instead eBay has only produced selected excerpts. As many of the sellers have been on eBay for years and have received other notifications prior to the period in question, all of the records on each seller are relevant to how eBay has</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p> <p>eBay produced responsive and relevant information in response to an interrogatory request. <i>See</i> September 5, 2014 Declaration of Peter Dion-Kindem ("Dion-Kindem Decl."), Ex. 1.</p> <p>Further disputed because if Plaintiff had arguments about the relevance of particular discovery requests, the time to raise them was during discovery.</p>

1 Purported Uncontroverted Fact	eBay's Response
2 and continues to implement its 3 termination policies. Rosen Decl., ¶ 4 27. 5	Moreover, plaintiff did not specifically request this information.
6 27.Rosen propounded discovery on 7 eBay about the Works that were 8 seen on Worthpoint as the Works 9 had clearly been sold or they would 10 not have been seen on Worthpoint. 11 eBay has failed to produce any 12 documents related to those listings. 13 Rosen Decl., ¶ 28.	Disputed. Please see eBay's response to ¶¶ 22, 23. Further disputed because Plaintiff provides no evidence to support his conclusory assertions that "the Works had clearly been sold or they would not have been seen on Worthpoint."
14 28.Rosen propounded discovery on 15 eBay about all documents related to 16 financial transactions for 17 items/listings in the case. eBay has 18 failed to produce any such docs but 19 did produce the eBay Exhibit B 20 spreadsheet, which clearly shows 21 that eBay has such documents from 22 which it created the spreadsheet. 23 Rosen Decl., ¶ 29.	Disputed. Please see eBay's response to ¶ 22. Further disputed because eBay did produce the information relevant to the financial transactions for the items/listings in this case from the database that stores such information as part of Exhibit B. Moreover, plaintiff did not specifically request this information.
25 29.eBay has failed to produce 26 documents from the relevant time	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
period (September – December 2013) to show that it was in compliance with its obligations under Section 512(c)(2). Rosen Decl., ¶ 30.	Disputed that eBay failed to comply with any of its discovery obligations in this litigation. eBay produced publicly available documents that inform users and the public about its repeat infringer policy. <i>See</i> eBay's 56-1 ¶¶ 114-115. eBay also produced an internal document that details the implementation of eBay's repeat infringer policy. EBAY0002043-46. eBay also produced a document detailing actions taken in connection with sellers identified in the instant action, eBay's Exhibit A.
30.eBay has failed to produce any documents to show that the Works were subject to either of the provisions of "First Sale Doctrine" (109(a), 109(c)). Rosen Decl., ¶ 31.	Disputed. Please see eBay's response to ¶ 22. Further disputed because paragraph 30 asserts a legal conclusion.
31.eBay received a financial benefit from the listings using infringing images and/or items. Exhibit B reflects that eBay received a financial benefit as to 16 listings, which listings included a total of 24	Disputed. eBay does not intend to profit from the sale or listing of infringing works. Once eBay is notified of an infringing listing, it takes down the listing under the VeRO program and refunds to the seller any and all fees eBay may have

Purported Uncontroverted Fact	eBay's Response
<p>of Rosen's Photographs, specifically, Work Nos. 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 24, 25, 27, 28, 32, 33, 36, 37 and 38. Rosen Decl., ¶ 32. Exhibit 2 to Dion-Kindem declaration.</p>	<p>collected in connection with that listing. See Declaration of Cara Baldwin in Opposition to Plaintiff Barry Rosen's Motion for Summary Judgment, dated Oct. 2, 2014 ("Baldwin Opp. Decl.") ¶ 15.</p>
<p>32.Rosen propounded discovery on eBay about the Works on Worthpoint, which had clearly been sold on eBay.com. eBay failed to produce any documents as they would show that eBay profited from the listings. Rosen Decl., ¶ 33.</p>	<p>Disputed. Please see eBay's response to ¶¶ 22, 23, 27. Further disputed because Plaintiff provides no evidence to support his false and conclusory assertions that "any documents would show that eBay profited from the listings."</p>
<p>33.eBay licenses its data related to finished listings and images to Terapeak (formally Advanced Ecommerce Research Systems), which then relicensed the data and images to Worthpoint. The contracts with Terapeak indicate that eBay does profit from its license to Terapeak. Rosen Decl., ¶ 34.</p>	<p>Disputed. Plaintiff provides no evidentiary support for the statements in paragraph 33. Plaintiff has not provided any evidence regarding Terapeak's purported relationship with Worthpoint, or to support an allegation that any revenues attributable to the Terapeak license relate to infringing items. Plaintiff has also not provided any evidence that eBay licenses images to Terapeak. While eBay does transmit data</p>

Purported Uncontroverted Fact	eBay's Response
	files to Terapeak containing various information about items sold, the data files do <i>not</i> include image files, nor does eBay license the use of sellers' images to Terapeak. <i>See</i> Dion-Kindem Decl., Ex. 5 at 1-2, 10-11.
34. eBay has a direct financial interest in the sale of copyrighted works through its website. The ability to buy and sell infringing works acts as a draw for customers and eBay earns a percentage on each transaction along with insertion fees, image hosting fees, PayPal fees and advertising fees. Rosen Decl., ¶ 35.	<p>Disputed. Please see eBay's response to ¶ 20.</p> <p>Disputed. When eBay takes down a listing under the VeRO program, it refunds to the seller any and all fees it may have collected in connection with that listing. <i>See</i> Baldwin Opp. Decl. ¶ 15. eBay did so here every time it received a NOCI from Rosen for one of his 8x10 Prints. <i>See id.</i> ¶¶ 23, 24, 26, 28, 29, 31, 32, 34, 35, 37. Moreover, eBay does not derive a financial benefit from advertisement revenues that is tied to infringing works as the advertisements on its website are not static and are placed "on the fly." <i>See id.</i> ¶ 18.</p> <p>Further disputed because infringement hurts eBay's business. <i>See</i> Declaration of</p>

Purported Uncontroverted Fact	eBay's Response
	Lynda Talgo in Support of Defendant eBay's Motion for Summary Judgment, dated Sept. 4, 2014 ("Talgo SJ Decl.") ¶ 6.
WORK 1: ANNA KOURNIKOVA: VA 1-239-766: ANNA KOURNIKOVA 2	
<p>A. grand130 infringement</p> <p>35. On or about September 5, 2013, Rosen discovered that a seller by the name of "grand130" had posted an unauthorized copy of an 8x10 photo print utilizing of one of Rosen's Anna Kournikova photographs (Work 1) for sale on eBay.com (eBay Listing No. 121165387241) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed. Rosen Decl., ¶ 37; Exhibit 115.</p>	<p>Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. ¶ 5.</p>
<p>36. eBay received a financial benefit from the infringement. Exhibit 2 to Dion-Kindem Declaration. This</p>	<p>Disputed. Please see eBay's response to ¶ 31. eBay took down Listing ID 121165387241 in response to a NOCI</p>

Purported Uncontroverted Fact	eBay's Response
<p>listing is reflected on row 9 on the 1st page of Exhibit B. Rosen Decl., ¶ 38.</p>	<p>from Plaintiff. Because eBay had ended the listing under its VeRO Program, eBay refunded the fees for the item, amounting to \$US 0.10. <i>See</i> Baldwin Opp. Decl. ¶ 24.</p>
<p>B. nyc3870 infringement</p> <p>37. On or about November 24, 2013, Rosen discovered that a seller by the name of "nyc3870" had posted an unauthorized copy of an 8x10 photo print utilizing of one of Rosen's Anna Kournikova photographs (Work 1) for sale on eBay.com (eBay Listing No. 261337891570) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed. Rosen Decl., ¶ 39; Exhibit 116; Exhibit 117.</p>	<p>Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. ¶ 5.</p>

Purported Uncontroverted Fact	eBay's Response
WORK 2: CHASE MASTERSON: VAU970-587: CHASE MASTERSON	
<p>A. bswitco infringement</p> <p>38. On or about September 8, 2013, Rosen discovered that a seller by the name of "bswitco" had posted an unauthorized copy of an 8x10 photo print of one of Rosen's Chase Masterson photographs (Work 2) for sale on eBay.com (eBay Listing No. 200961214147) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed. Rosen Decl., ¶ 40; Exhibit 107.</p>	<p>Disputed. Please see eBay's response to ¶ 1, 4. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. ¶ 5.</p>
<p>39. On or about December 2, 2013, Rosen discovered that a seller by the name of "bswitco" had again willfully reposted an unauthorized copy of an 8x10 photo print of one of Rosen's Chase Masterson photographs (Work 2) for sale on eBay.com (eBay Listing No.</p>	<p>Disputed. Please see eBay's response to ¶ 4.</p> <p>Further disputed because Plaintiff provides no evidentiary support for his characterization of any actions described in paragraph 39 as "willful."</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it</p>

Purported Uncontroverted Fact	eBay's Response
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 190988357746) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringement to eBay and the listing was removed. Rosen Decl., ¶ 41; Exhibits 108 and 109 and Exhibit 110.	down. <i>See</i> Baldwin Opp. ¶ 5.
40. The last known date that the image url/link remained active and available was December 13, 2013. Rosen Decl., ¶ 42; Exhibit 111.	Disputed. It is not clear what “image url/link” Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to December 13, 2013.
41. eBay financially benefited from the listing(s). Rosen Decl., ¶ 43; Exhibit 2 to Dion-Kindem Declaration). This listing is reflected on row 6 on the 8th page of Exhibit B.	Disputed. Please see eBay’s response to ¶ 31. eBay took down Listing ID 190988357746 in response to a NOCI from Plaintiff. Because eBay had ended the listing under its VeRO Program, eBay refunded the fees for the item, amounting to \$US 0.20. <i>See</i> Baldwin Opp. Decl. ¶ 35.
B. vintage81 infringement 42. On or about December 2, 2013, Rosen discovered that a seller by	Disputed. Please see eBay’s response to ¶ 1. Plaintiff has failed to provide any

Purported Uncontroverted Fact	eBay's Response
<p>the name of “vintage81” had posted an unauthorized copy of an 8x10 photo print of one of Rosen’s Chase Masterson photographs (Work 2) for sale on eBay.com (eBay Listing No. 281219067794) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed. Rosen Decl., ¶ 44; Exhibit 112, 113.</p>	<p>evidence that he owns the copyright to the image at issue.</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. ¶ 5.</p>
<p>43. The image was still active on eBay’s servers on December 13, 2013. Rosen Decl., ¶ 45; Exhibit 114.</p>	<p>Disputed. Plaintiff provides no evidence that the image referenced in the paragraph is the same as the image from the removed listing or that the image was on eBay’s servers (rather than on Plaintiff’s own computer). <i>See</i> eBay 56-1 ¶ 94; Rosen Dep. annexed as Ex. B to the Singer SJ Decl. at 161:24-165:25.</p> <p>Further disputed because there is no evidence that Plaintiff reported any image to eBay prior to December 13, 2013.</p>

Purported Uncontroverted Fact	eBay's Response
WORK 3: NATALIA SOKOLOVA: VA 1-230-923: PUBLISHED WORKS 2002 PT 1	
<p>A. stass22 infringement</p> <p>44. On or about September 4, 2013, Rosen discovered that a seller by the name of "stass22" had made and posted an unauthorized copy of one of Rosen's Natalia Sokolova Photographs (Work 3) on eBay.com (eBay Listing No. number 370888774348). Rosen reported the infringement to eBay, but it failed to remove the infringement. Rosen Decl., ¶ 46; Exhibits 58 and 59.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>
<p>45. On or about September 11 (eBay Listing No. 370895732017), October 14 (eBay Listing No. 370917866083), October 24 (eBay Listing No. 370924995305), November 3 (eBay Listing No. 370933304565), November 13 (eBay Listing No. 370940363068),</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>November 22 (eBay Listing No. 370948288111), December 2 (eBay Listing No. 70955586631) and December 11 (eBay Listing No. 370962368634), 2013, Rosen discovered that a seller by the name of "stass22" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 3) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements, except the September 11 listing (eBay Listing No. 370895732017). Rosen Decl., ¶ 47; Exhibit 60.</p>	
<p>46. The September 11 (eBay Listing No. 370895732017) 2013 listing was initially removed in response to Rosen's September 11 notification, but was subsequently deliberately reposted by eBay itself. Rosen</p>	<p>Undisputed that one of eBay's VeRO agents mistakenly took down the listing of a magazine for sale on or about September 13, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Amy Weber.</p>

Purported Uncontroverted Fact	eBay's Response
Decl., ¶ 48; Exhibits 61, 62 and 63.	<p>Disputed that the listing “was subsequently deliberately reposted by eBay itself.” Once the mistake was discovered, the listing was restored because eBay believed that the seller, in offering an old magazine for sale, had made a fair use of the images contained in the listing. eBay believes that sellers have a right to accurately depict the items they are offering for sale, and that potential buyers have a right to see the items they are considering purchasing.</p> <p>Declaration of Larry Taylor in Opposition to Plaintiff Barry Rosen’s Motion for Summary Judgment dated October 2, 2014 (“Taylor Opp. Decl.”) at ¶ 2.</p>
47. The last known date that the September 4 (eBay Listing No. 370888774348), October 14 (eBay Listing No. 370917866083), October 24 (eBay Listing No. 370924995305), November 3 (eBay Listing No. 370933304565), November 13 (eBay Listing No.	<p>Disputed. The listings referenced in the exhibits show listings that ended, and not “active and available” as Plaintiff alleges, and because Plaintiff fails to provide evidence related to the listings referenced in the paragraph.</p>

Purported Uncontroverted Fact	eBay's Response
<p>370940363068) listings remained active and available was November 20, 2013. The November 22 (eBay Listing No. 370948288111) and December 2 (eBay Listing No. 370955586631) listings were last known to be active on December 13, 2013. Rosen Decl., ¶ 49; Exhibits 64 and 65.</p>	
<p>48. The December 9 (eBay Listing No. 370957582082) was last known to be active on December 20, 2013. Rosen Decl., ¶ 50.</p>	<p>Disputed. The listing shown in Rosen Decl. Exhibit 50 (listing 370957582082), does not appear in Plaintiff's Second Amended Complaint and is therefore not at issue. Further disputed because the seller in Rosen Decl. Exhibit 50 is not "stass22."</p>
<p>B. luki_kulka infringements</p> <p>49. On or about September 13, 2013, Rosen discovered that a seller by the name of "luki_kulka" had made and posted an unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 3) on eBay.com (eBay Listing No. 350874891067).</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 22.</p> <p>Undisputed that Rosen reported the infringement and eBay removed the listing. Disputed that the listing was not removed "expeditiously" because one of</p>

Purported Uncontroverted Fact	eBay's Response
<p>Rosen reported the infringement to eBay and it removed the listing, but did not do so expeditiously. It is unknown exactly when eBay finally removed the listing as it has failed to produce such documents in discovery in this case. Rosen Decl., ¶ 51; Exhibit 66.</p>	<p>eBay's VeRO agents mistakenly took down the listing on or about September 13, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Joanna Krupa. This mistake was not discovered until after the Second Amended Complaint had been filed and the listing was not restored. <i>See</i> Taylor Opp. Decl. ¶ 3.</p>
<p>50. On or about February 17, 2014, Rosen discovered that a seller by the name of "luki_kulka" had again made and posted an unauthorized copy of one of Rosen's Joanna Krupa (Work 3) photographs on eBay.com (eBay Listing No. 351002796575) after this lawsuit was filed. Rosen Decl., ¶ 52; Exhibit 67.</p>	<p>Disputed. It is unclear what paragraph 50 refers to, as it references a photograph of Joanna Krupa, but the listing number and Rosen Decl. Exhibit 67 show a photograph of Natalia Sokolova appearing in a magazine.</p>
<p>C. kasiaemilia1 infringement</p> <p>51. On or about September 4, 2013, Rosen discovered that a seller by the name of "kasiaemilia1" had made and posted an unauthorized</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the</p>

Purported Uncontroverted Fact	eBay's Response
<p>copy of one of Rosen's Natalia Sokolova photographs (Work 3) on eBay.com (eBay Listing No. 290969872836). Rosen reported the infringement to eBay, but it failed to remove the infringement. Rosen Decl., ¶ 53; Exhibits 68 and 69.</p>	<p>alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>
<p>52. On or about September 8, 2013 (eBay Listing No. 290973472797), September 14, 2013 (eBay Listing No. 290977784427), September 23, 2013 (eBay Listing No. 290982319241), October 1, 2013 (eBay Listing No. 290987012062), October 7, 2013 (eBay Listing No. 290991089101), October 14, 2013 (eBay Listing No. 290993511233), October 19, 2013 (eBay Listing No. 290997408595), October 24, 2013 (eBay Listing No. 291002131018), October 31, 2013 (eBay Listing No.</p>	<p>Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>291006862414), November 8, 2013 (eBay Listing No. 291010799137), November 13, 2013 (eBay Listing No. 291016057083), November 20, 2013 (eBay Listing No. 291021159985), November 28, 2013 (eBay Listing No. 291026379897), December 9, 2013 (eBay Listing No. 291033831397) and December 16, 2013 (eBay Listing No. 291038568540), Rosen discovered that a seller by the name of “kasiaemilia1” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Natalia Sokolova photographs (Work 3) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements. Rosen Decl., ¶ 54.</p>	
<p>53. The last known date that the September 4 (eBay Listing No. 290969872836), September 8 (eBay</p>	<p>Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay’s website on the date alleged.</p>

Purported Uncontroverted Fact	eBay's Response
<p>1 Listing No. 290973472797), 2 September 14 (eBay Listing No. 3 290977784427), September 23 4 (eBay Listing No. 290982319241), 5 October 1 (eBay Listing No. 6 290987012062), October 7 (eBay 7 Listing No. 290991089101), 8 October 14 (eBay Listing No. 9 290993511233), October 19 (eBay 10 Listing No. 290997408595), 11 October 24 (eBay Listing No. 12 291002131018), October 31 (eBay 13 Listing No. 291006862414), 14 November 8 (eBay Listing No. 15 291010799137), November 13 16 (eBay Listing No. 291016057083) 17 listings remained active and 18 available was November 20, 2013. 19 Rosen Decl., ¶ 55.</p>	
<p>20 21 54. The November 20 (eBay Listing 22 No. 291021159985) and November 23 28 (eBay Listing No. 24 291026379897) listings were last 25 known to be active on December</p>	<p>26 Disputed. The exhibits referenced show the listings ended and were not “active” as Plaintiff alleges.</p>

Purported Uncontroverted Fact	eBay's Response
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 13, 2013. Rosen Decl., ¶ 56; Exhibits 70 and 71.	
55.Based on the information contained in eBay Exhibit A and eBay Exhibit B (Exhibits 1 and 2 to Dion-Kindem Declaration), it appears that eBay removed the October 7 (eBay Listing No. 290991089101) (see eBay Exhibit B) listing on October 8 and deliberately reposted it on October 9 (see eBay Exhibit A). Rosen Decl., ¶ 59.	Undisputed that one of eBay's VeRO agents mistakenly took down the magazine listing no. 290991089101 on October 8, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Amy Weber. Disputed that eBay "deliberately reposted it." Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. Since eBay had ended the listing prematurely, eBay refunded all then-current listing fees for the item, including the insertion fee and any applicable listing upgrade or supplemental service fees. eBay did not charge a fee when the item was restored. <i>See Taylor Opp. Decl. ¶ 4.</i>

Purported Uncontroverted Fact	eBay's Response
<p>WORK 4: NATALIA SOKOLOVA: VA 1-230-923: PUBLISHED WORKS 2002 PT 1</p>	
<p>A. luki_kulka infringement</p> <p>56. On or about September 13, 2013, Rosen discovered that a seller by the name of "luki_kulka" had made and posted an unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 4) on eBay.com (eBay Listing No. 350874891067). Rosen reported the infringement to eBay and it removed the listing. It is unknown exactly when eBay finally removed the listing as it has failed to produce such documents in discovery in this case. Rosen Decl., ¶ 60; Exhibit 66.</p>	<p>Disputed. Please see eBay's response to ¶ 1, 5, 22, 49.</p>
<p>57. On or about February 17, 2014, Rosen discovered that a seller by the name of "luki_kulka" had again made and posted an unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 4) on eBay.com (eBay Listing No.</p>	<p>Disputed because paragraph 57 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013. Further disputed that the copy was unauthorized. As a courtesy to the seller,</p>

Purported Uncontroverted Fact	eBay's Response
351002796575) after this lawsuit was filed. Rosen Decl., ¶ 61; Exhibit 67.	because of the pending litigation, eBay administratively ended the listing on February 19, 2014. <i>See</i> Taylor Opp. Decl. ¶ 19.
WORK 5: NATALIA SOKOLOVA: VA 1-230-923: PUBLISHED WORKS 2002 PT 1	
<p>A. luki_kulka infringement</p> <p>58. On or about September 13, 2013, Rosen discovered that a seller by the name of “luki_kulka” had made and posted an unauthorized copy of one of Rosen’s Natalia Sokolova photographs (Work 5) on eBay.com (eBay Listing No. 350874891067). Rosen reported the infringement to eBay and it removed the listing. It is unknown exactly when eBay finally removed the listing as it has failed to produce such documents in discovery in this case. Rosen Decl., ¶ 62; Exhibit 66.</p>	Disputed. Please see eBay’s response to ¶¶ 1, 5, 22, 49, 56.
59. On or about February 17, 2014, Rosen discovered that a seller by the name of “luki_kulka” had again	Disputed because paragraph 59 appears to address an alleged infringement that took place months after the time period that is

Purported Uncontroverted Fact	eBay's Response
<p>made and posted an unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 5) on eBay.com (eBay Listing No. number 351002796575) after this lawsuit was filed. Rosen Decl., ¶ 63; Exhibit 67.</p>	<p>relevant to the instant action, which was filed on September 16, 2013.</p> <p>Disputed. Please see eBay's response to ¶ 57.</p>
WORK 6: JOANNA KRUPA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
<p>A. luki_kulka infringement</p> <p>60. On or about September 4, 2013, Rosen discovered that a seller by the name of "luki_kulka or luk_kulka" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) on eBay.com (eBay Listing No. 350868151643). Rosen reported the infringement to eBay, but it failed to remove the infringements. Rosen Decl., ¶ 64; Exhibits 17 and 18.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. ¶¶ 27-29.</p>
61. On or about September 13, 2013	Disputed because Plaintiff fails to provide

Purported Uncontroverted Fact	eBay's Response
<p>Rosen discovered that a seller by the name of “luki_kulka or luk_kulka” had again posted an auction on eBay.com (eBay Listing No. 350874891072) with the same unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 6) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to expeditiously remove the infringements. Rosen Decl., ¶ 65; Exhibits 19 and 20.</p>	<p>any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>
<p>62. On or about September 15, 2013 (eBay Listing No. 350876008113), October 1, 2013 (eBay Listing No. 350887872004), October 14, 2013 (eBay Listing No. 350898977687), October 29, 2013 (eBay Listing No. 35091146019), November 13, 2013 (eBay Listing No. 350923730134) and December 9, 2013 (eBay Listing No. 350949411898) 2013, Rosen discovered that a seller by</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>the name of “luki_kulka or luk_kulka” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 6) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it consistently failed to remove the infringements. Rosen Decl., ¶ 66.</p>	
<p>63. The last known date that the September 4 (eBay Listing No. 350868151643), September 15 (eBay Listing No. 350876008113), October 1 (eBay Listing No. 350887872004), October 14 (eBay Listing No. 350898977687), October 29 (eBay Listing No. 35091146019), November 13 (eBay Listing No. 350923730134) listings remained active and available was November 20, 2013. The December 9 (eBay Listing No. 350949411898) listing was last known to be active</p>	<p>Disputed because it is unclear what the paragraph is referring to.</p> <p>Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s).</p> <p>Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay’s website on the date alleged.</p>

Purported Uncontroverted Fact	eBay's Response
on December 20, 2013. Rosen Decl., ¶ 67.	
64. It is unknown when eBay finally removed the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 68.	Disputed. Please see eBay's response to ¶ 22. Disputed. Magazine listing no. 350949411898 ended on December 22, 2013. <i>See</i> Taylor Opp. Decl. ¶ 5.
65. eBay did at some point remove the image(s) from the December 9 (eBay Listing No. 350949411898) listing. (Rr Pp 69; Exhibits 21 and 22.)	Undisputed that magazine listing no. 350949411898 ended on December 22, 2013. <i>See</i> Taylor Opp. Decl. ¶ 5.
<p>B. kasiaemilia1 infringements</p> <p>66. On or about September 4, 2013, Rosen discovered that a seller by the name of "kasiaemilia1" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) on eBay.com (eBay Listing No. 290969661235). Rosen reported the infringement to eBay and it</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 22. Disputed. Listing no. 290969661235 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on or about September 13, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Amy

Purported Uncontroverted Fact	eBay's Response
<p>removed the listing. It is unknown exactly when eBay finally removed the listing as it has failed to produce such documents in discovery in this case. Rosen Decl., ¶ 70; Exhibits 23 and 24.</p>	<p>Weber. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller, in offering an old magazine for sale, had made a fair use of the images contained in the listing. <i>See</i> Taylor Opp. Decl. ¶ 10.</p>
<p>67. On or about September 8, 2013 (eBay Listing No. 290972864370), September 13, 2013 (eBay Listing No. 290977126957), September 23, 2013 (eBay Listing No. 290993511234), October 14, 2013 (eBay Listing No. 291002126570), October 17, 2013 (eBay Listing No. 290997406764), October 24, 2013 (eBay Listing No. 291002126570), October 31, 2013 (eBay Listing No. 291006854769), November 8, 2013 (eBay Listing No. 291010795678), November 13, 2013 (eBay Listing No. 291016052293), November 20, 2013 (eBay Listing No. 291021156614), November 28, 2013 (eBay Listing No.</p>	<p>Disputed. Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Disputed. Listing no. 290977126957 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on September 15, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Joanna Krupa. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. <i>See</i> Taylor Opp. Decl. ¶ 6.</p>

Purported Uncontroverted Fact	eBay's Response
<p>291026380043), December 9, 2013 (eBay Listing No. 291033829454), and December 16, 2013 (eBay Listing No. 291038564409), Rosen discovered that a seller by the name of “kasiaemilia1” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 6) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the listings except the September 13 (eBay Listing No. 290977126957). Rosen Decl., ¶ 71; Exhibits 25 and 26.</p>	
<p>68. The September 13, 2013 (eBay Listing No. 290977126957) listing was initially removed in response to Rosen’s September 13 notification, but was subsequently deliberately reposted by eBay itself on October 9, 2013. Rosen Decl., ¶ 72; Exhibit 1 to Dion-Kindem Declaration;</p>	<p>Disputed that listing “was subsequently deliberately reposted by eBay itself.” Listing no. 290977126957 was a magazine listing. One of eBay’s VeRO agents mistakenly took down the listing on September 15, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Joanna Krupa.</p>

Purported Uncontroverted Fact	eBay's Response
Exhibits 27 and 28.	Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. <i>See</i> Taylor Opp. Decl. ¶ 6.
69. The last known date that the September 23 (eBay Listing No. 290993511234), October 14 (eBay Listing No. 291002126570), October 17 (eBay Listing No. 290997406764), October 24 (eBay Listing No. 291002126570), October 31 (eBay Listing No. 291006854769), November 8 (eBay Listing No. 291010795678), listings remained active and available was November 20, 2013. The November 20 (eBay Listing No. 291021156614), November 28 (eBay Listing No. 291026380043) listings was last known to be active on December 13, 2013 and the December 9 (eBay Listing No.	Disputed. Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s). Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay's website on the date alleged. Disputed because it is unclear what the paragraph is referring to.

Purported Uncontroverted Fact	eBay's Response
<p>291033829454) was last known to be active on December 20, 2013. Rosen Decl., ¶ 73.</p>	
<p>70. True and correct copies of the September 23, November 20 and December 9 listings as they existed on eBay.com on November 20, December 13 and December 20, 2013 are attached to Rosen's Declaration as Exhibits 29, 30 and 31. Rosen Decl., ¶ 74.</p>	<p>Disputed. The exhibits referenced show the listings ended and not "active" as Plaintiff alleges.</p>
<p>C. stass22 infringements</p> <p>71. On or about September 4, 2013, Rosen discovered that a seller by the name of "stass22" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) on eBay.com (eBay Listing No. 370885283479). Rosen reported the infringements to eBay and it removed and then reposted the infringing listings. True and correct copies of the notice and infringement(s) as they existed on</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p>Disputed. The exhibits referenced show the listings ended and not "active" as Plaintiff alleges.</p> <p>Disputed that eBay "reposted the infringing listings." Listing no. 370885283479 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on September 6, 2013, and recorded incorrectly that the</p>

Purported Uncontroverted Fact	eBay's Response
1 2 eBay.com on September 4, 2013, 3 the listing showing removed on 4 September 23 and the active listing 5 on November 20 are attached to 6 Rosen's Declaration as Exhibits 32, 7 33, 34 and 35. Rosen Decl., ¶ 75. 8 9	listing infringed copyrights belonging to Amy Weber. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. <i>See</i> Taylor Opp. Decl. ¶ 7.
10 11 72. On or about September 5, 2013 12 (eBay Listing No. 370891803007), 13 September 8, 2013 (eBay Listing 14 No. 370893557558), September 18, 15 2013 (eBay Listing No. 16 370900915949), October 1, 2013 17 (eBay Listing No. 370909006727), 18 October 14, 2013 (eBay Listing No. 19 370917770610), October 29, 2013 20 (eBay Listing No. 370926685809), 21 November 3, 2013 (eBay Listing 22 No. 370934630597), November 13, 23 2013 (eBay Listing No. 24 370942330920), November 24, 25 2013 (eBay Listing No. 26 370949867363), December 9, 2013 (eBay Listing No. 370957582082)	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay's website on the date alleged. Further disputed because Plaintiff fails to provide any evidence of the listings referenced in paragraph 71, other than listing 370964524900, appearing on eBay's website as of December 14, 2013.

Purported Uncontroverted Fact	eBay's Response
<p>and December 14, 2013 (eBay Listing No. 370964524900), Rosen discovered that a seller by the name of "stass22" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Joanna Krupa photographs(Work 6) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the listings, except the September 5 listing (eBay Listing No. 370891803007). True and correct copies of the most recent infringement(s) as they existed on eBay.com on December 14, 2013 are attached to Rosen's Declaration as Exhibit 36. Rosen Decl., ¶ 76.</p>	
<p>73.The September 5 (eBay Listing No. 370891803007) 2013 listing was initially removed in response to Rosen's September 5 notification, but was subsequently deliberately</p>	<p>Disputed that listing was "deliberately reposted by eBay itself." Listing no. 370891803007 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on September 8,</p>

Purported Uncontroverted Fact	eBay's Response
<p>reposted by eBay itself on October 11, 2013. (See eBay Exhibit A, Exhibit 1 to Dion-Kindem Declaration.) True and correct copies of the September 5, 2013 (eBay Listing No. 370891803007) listing showing that it was not available on September 23 and as the re-posting existed on eBay.com on November 20, 2013 are attached to Rosen's Declaration as Exhibits 37, 38 and 39. Rosen Decl., ¶ 77.</p>	<p>2013, and recorded incorrectly that the listing infringed copyrights belonging to Joanna Krupa. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. <i>See Taylor Opp. Decl.</i> ¶ 8.</p> <p>Further disputed because Rosen Decl. Exhibit 39 shows listing 370891803007 ended, and not a “re-posting” as Plaintiff alleges.</p>
<p>74. The last known date that the September 8 (eBay Listing No. 370893557558), September 18 (eBay Listing No. 370900915949), October 1 (eBay Listing No. 370909006727), October 14 (eBay Listing No. 370917770610), October 29 (eBay Listing No. 370926685809), November 3 (eBay Listing No. 370934630597), November 13 (eBay Listing No. 370942330920) listings remained</p>	<p>Disputed. Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s).</p> <p>Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay’s website on the date alleged.</p>

Purported Uncontroverted Fact	eBay's Response
1 2 active and available was November 3 20, 2013. Rosen Decl., ¶ 78. 4	
5 75. The November 24 (eBay Listing 6 No. 370949867363) listings was last 7 known to be active on December 8 13, 2013 and the December 9 (eBay 9 Listing No. 370957582082) was last 10 known to be active on December 11 20, 2013. It is unknown when eBay 12 finally removed the December 14 13 (eBay Listing No. 370964524900) 14 and all of the listings as it has failed 15 to produce such documents in 16 discovery. Rosen Decl., ¶ 79. 17	Disputed. Please see eBay's response to ¶ 22. Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s). Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay's website on the date alleged.
18 76. True and correct copies of the 19 September 8, November 24 listings 20 as they existed on eBay.com on 21 November 20, December 13 and the 22 December 9 listing as it existed on 23 December 20, 2013 with images 24 removed are attached to Rosen's 25 Declaration as Exhibits 40, 41, and 26 42. Rosen Decl., ¶ 80. 27	Disputed. The exhibits referenced show the listings ended and not "active" as Plaintiff alleges. Further disputed because Rosen Decl. Exhibit 40 shows listing 370893557558 ended.

Purported Uncontroverted Fact	eBay's Response
<p>D. kupiecki2 infringements</p> <p>77. On or about September 4, 2013, Rosen discovered that a seller by the name of "kupiecki2" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) on eBay.com (eBay Listing Nos. 310729966575 and 310728991850). Rosen reported the infringement(s) to eBay, but it failed to remove the infringement(s). True and correct copies of the notice and infringement(s) (310729966575) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 43, 44 and 45. Rosen Decl., ¶ 81.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>
<p>78. On or about September 5, 2013 (eBay Listing No. 310738856689), September 8 2013 (eBay Listing No. 310739897595), September 23 2013 (eBay Listing No. 310752406472), Rosen discovered</p>	<p>Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Listing no. 310738856689 was a magazine listing. One of eBay's VeRO</p>

Purported Uncontroverted Fact	eBay's Response
<p>that a seller by the name of “kupiecki2” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 6) as was in the September 4, 2013 auction(s). Rosen reported the infringements to eBay, but it failed to remove the listings, except the September 5 listing. Rosen Decl., ¶ 82.</p>	<p>agents mistakenly took down the listing on September 15, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Joanna Krupa. This mistake was not discovered until after the Second Amended Complaint had been filed and the listing was not restored. <i>See</i> Taylor Opp. Decl. ¶ 9.</p>
<p>79. The last known date that the September 4 (eBay Listing No. 310729966575 310728991850), September 8 (eBay Listing No. 310739897595), September 23 (eBay Listing No. 310752406472), 2013 listings remained active and available was November 20, 2013. True and correct copies of the September 4 listings as they existed on eBay.com on November 20 are attached to Rosen’s Declaration as Exhibits 47 and 48. Rosen Decl., ¶</p>	<p>Disputed. The listings referenced in the exhibits show listings that ended and not “active and available” as Plaintiff alleges.</p>

Purported Uncontroverted Fact	eBay's Response
83.	
80. It is unknown when eBay finally removed the all of the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 84	Disputed. Please see eBay's response to ¶ 22.
<p>E. archivist Infringement</p> <p>81. On or about September 4, 2013, Rosen discovered that a seller by the name of "archivist" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) on eBay.com (eBay Listing No. 310732455430). Rosen reported the infringement(s) to eBay, but it failed to remove the infringement(s). It is unknown when eBay finally removed the listing as it has failed to produce such documents in discovery, but it was still known to be active on November 20, 2013. True and correct copies of the notice and infringement(s) as they existed on</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 22.</p> <p>Disputed because it is unclear what the paragraph is referring to.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>

Purported Uncontroverted Fact	eBay's Response
eBay.com on September 4, 2013 and on November 20, 2013 are attached to Rosen's Declaration as Exhibits 49, 50 and 51. Rosen Decl., ¶ 85.	
82.eBay financially benefited from this infringement(s). (See Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 12 on the 1st page of Exhibit B. Rosen Decl., ¶ 86.	Disputed. The magazine that was the subject of Listing ID 310732455430 was sold on August 28, 2013, and Plaintiff did not submit a NOCI for that listing until on or about September 4, 2013. Because the item had been sold and eBay reasonably believed the listing made fair use of the images it contained, eBay did not refund the fees for the item. See Baldwin Opp. Decl. ¶ 25.
F. menofwood infringements 83.On or about November 28, 2013, Rosen discovered that a seller by the name of "menofwood" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) on eBay.com (eBay Listing No. 400615627314). Rosen reported the	Disputed. Please see eBay's response to ¶¶ 1, 5. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that

Purported Uncontroverted Fact	eBay's Response
<p>infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on November 28, 2013 are attached to Rosen's Declaration as Exhibits 52 and 53. Rosen Decl., ¶ 87.</p>	<p>the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>
<p>84. On or about December 9, 2013 (eBay Listing No. 400620458209) and December 14, 2013 (eBay Listing No. 400626202206) 2013, Rosen discovered that a seller by the name of "menofwood" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 6) as was in the November 28, 2013 auction. Rosen reported the infringements to eBay, but it consistently failed to remove the infringements. Rosen Decl., ¶ 88.</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>85. The last known date that the November 28 (eBay Listing No. 400615627314) and December 9 (eBay Listing No. 400620458209) listings remained active and available was December 20, 2013. A true and correct copy of the November 28 and December 9 listings as they existed December 20, 2013 on are attached to Rosen's Declaration as Exhibits 54 and 55. Rosen Decl., ¶ 89.</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Disputed because Rosen Decl. Exhibits 54 and 55 show listings 400615627314 and 400620458209 ended and not "active and available" as Plaintiff alleges.</p>
<p>86. It is unknown when eBay finally removed all the listings including the December 14 (eBay Listing No. 400626202206) 2013 listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 90.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>87. eBay financially benefited from these infringements. (See Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on rows 2 and 12 on the</p>	<p>Disputed. Please see eBay's response to ¶ 31.</p> <p>Disputed. Because these listings had been ended prematurely, eBay refunded</p>

Purported Uncontroverted Fact	eBay's Response
8th page and row 7 on the 9th page of Exhibit B. Rosen Decl., ¶ 91.	the then-current listing fees. <i>See</i> Baldwin Opp. Decl. ¶¶ 33, 37, 38. eBay has developed and put in place robust systems to protect intellectual property rights. Talgo SJ Decl. ¶ 6.
WORK 7: JOANNA KRUPA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
<p>A. luki_kulka infringements</p> <p>88. On or about September 4, 2013, Rosen discovered that a seller by the name of “luki_kulka or luk_kulka” had made and posted an unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 7) on eBay.com (eBay Listing No. 350868151643). Rosen reported the infringement to eBay, but it failed to remove the infringements. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen’s Declaration as Exhibits 17 and 18. Rosen Decl., ¶</p>	<p>Disputed. Please see eBay’s response to ¶¶ 1, 5, 60, 63.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>

Purported Uncontroverted Fact	eBay's Response
92.	
<p>89. On or about September 13, 2013 Rosen discovered that a seller by the name of "luki_kulka or luk_kulka" had again posted an auction on eBay.com (eBay Listing No. 350874891072) with the same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 7) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 13, 2013 are attached to Rosen's Declaration as Exhibits 19 and 20. Rosen Decl., ¶ 93.</p>	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
<p>90. The last known date that the September 4, 2013 (eBay Listing No. 350868151643), listing remained active and available was November 20, 2013. A true and correct copy of the September 4</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p> <p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the</p>

Purported Uncontroverted Fact	eBay's Response
<p>listing on November 20, 2013 is attached to Rosen's Declaration as Exhibit 21. It is unknown when eBay finally removed the listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 94.</p>	same image(s).
<p>B. kasiaemilia1 infringements</p> <p>91. On or about September 4, 2013, Rosen discovered that a seller by the name of "kasiaemilia1" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 7) on eBay.com (eBay Listing No. 290969661235). Rosen reported the infringement to eBay and it removed the listing. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 23 and 24. Rosen Decl., ¶ 95.</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 66.

Purported Uncontroverted Fact	eBay's Response
<p>92. On or about September 8, 2013 (eBay Listing No. 290972864370), September 13, 2013 (eBay Listing No. 290977126957), September 23, 2013 (eBay Listing No. 290993511234), October 14, 2013 (eBay Listing No. 291002126570), October 17, 2013 (eBay Listing No. 290997406764), October 24, 2013 (eBay Listing No. 291002126570), October 31, 2013 (eBay Listing No. 291006854769), November 8, 2013 (eBay Listing No. 291010795678), November 13, 2013 (eBay Listing No. 291016052293), November 20, 2013 (eBay Listing No. 291021156614), November 28, 2013 (eBay Listing No. 291026380043), December 9, 2013 (eBay Listing No. 291033829454), and December 16, 2013 (eBay Listing No. 291038564409), Rosen discovered that a seller by the name of "kasiaemilia1" had again posted an auction on eBay.com with the</p>	<p>Disputed. Please see eBay's response to ¶ 67.</p>

Purported Uncontroverted Fact	eBay's Response
<p>same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 7) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements except the September 13 (eBay Listing No. 290977126957). True and correct copies of the December 9, 2013 infringement(s) and as it existed on eBay.com on December 20 with the images removed attached to Rosen's Declaration as Exhibits 25 and 26. Rosen Decl., ¶ 96.</p>	
<p>93. The September 13, 2013 (eBay Listing No. 290977126957) listing was initially removed in response to Rosen's September 13 notification, but was subsequently deliberately reposted by eBay itself on October 9 (See eBay Exhibit A, Exhibit 1 to Dion-Kindem Declaration.) True and correct copies of the September 13, 2013 (eBay Listing No.</p>	<p>Disputed. Please see eBay's response to ¶¶ 67-68. Further disputed because Rosen Decl. Exhibit 28 shows listing 290977126957 ended, and not a "re-posting" as Plaintiff alleges.</p>

Purported Uncontroverted Fact	eBay's Response
<p>290977126957) listing showing that it was not available on September 23 and as the re-posting existed on eBay.com on November 20, 2013 are attached to Rosen's Declaration as Exhibits 27 and 28. Rosen Decl., ¶ 97.</p>	
<p>94. The last known date that the September 23 (eBay Listing No. 290993511234), October 14 (eBay Listing No. 291002126570), October 17 (eBay Listing No. 290997406764), October 24 (eBay Listing No. 291002126570), October 31 (eBay Listing No. 291006854769), November 8 (eBay Listing No. 291010795678), listings remained active and available was November 20, 2013. The November 20 (eBay Listing No. 291021156614), November 28 (eBay Listing No. 291026380043) listings was last known to be active on December 13, 2013 and the</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay's website on the date alleged.</p>

Purported Uncontroverted Fact	eBay's Response
<p>December 9 (eBay Listing No. 291033829454) was last known to be active on December 20, 2013.</p> <p>True and correct copies of the September 23, November 20 and December 9 listings as they existed on eBay.com on November 20, December 13 and December 20, 2013 are attached to Rosen's Declaration as Exhibits 29, 30 and 31. Rosen Decl., ¶ 98.</p>	
<p>95. It is unknown when eBay finally removed the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 99.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>C. menofwood infringements</p> <p>96. On or about November 28, 2013, Rosen discovered that a seller by the name of "menofwood" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 7) on eBay.com (eBay Listing No. 400615627314). Rosen reported the</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 83.</p>

1 Purported Uncontroverted Fact	eBay's Response
2 infringement to eBay, but it failed to 3 remove the infringement. True and 4 correct copies of the notice and 5 infringement(s) as they existed on 6 eBay.com on November 28, 2013 7 are attached to Rosen's Declaration 8 as Exhibits 52 and 53. Rosen Decl., 9 ¶ 100.	
10 97. On or about December 9, 2013 11 (eBay Listing No. 400620458209) 12 and December 14, 2013 (eBay 13 Listing No. 400626202206) 2013, 14 Rosen discovered that a seller by 15 the name of "menofwood" had 16 again posted an auction on 17 eBay.com with the same 18 unauthorized copy of one of 19 Rosen's Joanna Krupa photographs 20 (Work 7) as was in the November 21 28, 2013 auction. Rosen reported 22 the infringements to eBay, but it 23 consistently failed to remove the 24 infringements. Rosen Decl., ¶ 101.	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
26 98. The last known date that the	27 Disputed. Please see eBay's response to

Purported Uncontroverted Fact	eBay's Response
<p>November 28 (eBay Listing No. 400615627314) and December 9 (eBay Listing No. 400620458209) listings remained active and available was December 20, 2013. A true and correct copy of the November 28 and December 9 listings as they existed December 20, 2013 on are attached to Rosen's Declaration as Exhibits 54 and 55.</p> <p>Rosen Decl., ¶ 102.</p>	¶ 84, 96.
<p>99. It is unknown when eBay finally removed all the listings including the December 14 (eBay Listing No. 400626202206) 2013 listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 103.</p>	Disputed. Please see eBay's response to ¶¶ 22, 86.
WORK 8: JOANNA KRUPA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
<p>A. luki_kulka infringements</p> <p>100. On or about September 4, 2013, Rosen discovered that a seller by the name of "luki_kulka or</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 60, 63, 88.

Purported Uncontroverted Fact	eBay's Response
<p>luk_kulka" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 8) on eBay.com (eBay Listing No. 350868151643). Rosen reported the infringement to eBay, but it failed to remove the infringements. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 17 and 18. Rosen Decl., ¶ 104.</p>	
<p>101. On or about September 13, 2013 Rosen discovered that a seller by the name of "luki_kulka or luk_kulka" had again posted an auction on eBay.com (eBay Listing No. 350874891072) with the same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 8) as was in the September 4, 2013 auction. Rosen reported the</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>1 infringements to eBay, but it failed 2 to expeditiously remove the 3 infringements. True and correct 4 copies of the notice and 5 infringement(s) as they existed on 6 eBay.com on September 13, 2013 7 are attached to Rosen's Declaration 8 as Exhibits 19 and 20. Rosen Decl., 9 ¶ 205.</p>	
<p>102. On or about September 15, 2013 11 (eBay Listing No. 350876008113), 12 October 1, 2013 (eBay Listing No. 13 350887872004), October 14, 2013 14 (eBay Listing No. 350898977687), 15 October 29, 2013 (eBay Listing No. 16 35091146019), November 13, 2013 17 (eBay Listing No. 350923730134) 18 and December 9, 2013 (eBay 19 Listing No. 350949411898), Rosen 20 discovered that a seller by the name 21 of "luki_kulka or luk_kulka" had 22 again posted an auction on 23 eBay.com with the same 24 unauthorized copy of one of</p>	<p>Disputed because it is unclear what the paragraph is referring to. The paragraph references "Work 6" but the section appears to address "Work 8."</p> <p>Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s).</p>

1 Purported Uncontroverted Fact	eBay's Response
2 Rosen's Joanna Krupa photographs 3 (Work 6) as was in the September 4, 4 2013 auction. Rosen reported the 5 infringements to eBay, but it 6 consistently failed to remove the 7 infringements. Rosen Decl., ¶ 106.	
8 103. The last known date that the 9 September 4 (eBay Listing No. 10 350868151643), September 15 11 (eBay Listing No. 350876008113), 12 October 1 (eBay Listing No. 13 350887872004), October 14 (eBay 14 Listing No. 350898977687), 15 October 29 (eBay Listing No. 16 35091146019), November 13 (eBay 17 Listing No. 350923730134) listings 18 remained active and available was 19 November 20, 2013. The December 20 9 (eBay Listing No. 350949411898) 21 listing was last known to be active 22 on December 20, 2013. Rosen 23 Decl., ¶ 107.	Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s). Disputed. Please see eBay's response to ¶¶ 1, 5, 60, 63, 88, 100.
24 25 104. eBay did at some point remove 26 the image(s) from the December 9	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits

1 Purported Uncontroverted Fact	eBay's Response
2 3 4 5 6 7 8 9 (eBay Listing No. 350949411898) listing. A true and correct copy of the September 4 listing on November 20, 2013 and the December 9 without the images on December 20, 2013 is attached to Rosen's Declaration as Exhibits 21 and 22. Rosen Decl., ¶ 108.	referenced consist of or contain any of the same image(s). Undisputed that magazine listing no. 350949411898 ended on December 22, 2013. <i>See</i> Taylor Opp. Decl. ¶ 5.
10 11 12 13 14 105. It is unknown when eBay finally removed all of the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 109.	Disputed. Please see eBay's response to ¶ 22.
15 B. stass22 infringements 16 17 18 19 20 106. On or about September 4, 2013, Rosen discovered that a seller by the name of "stass22" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 8) on eBay.com (eBay Listing No. 370885283479). Rosen reported the infringements to eBay and it removed the listing, but the reposted the infringing listing. True and correct copies of the	Disputed. The exhibits referenced show the listings ended and not "active" as Plaintiff alleges. Disputed that eBay "reposted the infringing listings." Listing no. 370885283479 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on September 6, 2013, and recorded incorrectly that the listing infringed copyrights belonging to

Purported Uncontroverted Fact	eBay's Response
notice and infringement(s) as they existed on eBay.com on September 4, 2013, the listing showing removed on September 23 and the active listing on November 20 are attached to Rosen's Declaration as Exhibits 32, 33, 34 and 35. Rosen Decl., ¶ 110.	Amy Weber. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. <i>See</i> Taylor Opp. Decl. ¶ 7.
107. On or about September 5, 2013 (eBay Listing No. 370891803007), September 8, 2013 (eBay Listing No. 370893557558), September 18, 2013 (eBay Listing No. 370900915949), October 1, 2013 (eBay Listing No. 370909006727), October 14, 2013 (eBay Listing No. 370917770610), October 29, 2013 (eBay Listing No. 370926685809), November 3, 2013 (eBay Listing No. 370934630597), November 13, 2013 (eBay Listing No. 370942330920), November 24, 2013 (eBay Listing No. 370949867363), December 9, 2013	Disputed. Please see eBay's response to ¶¶ 72, 73.

Purported Uncontroverted Fact	eBay's Response
<p>(eBay Listing No. 370957582082) and December 14, 2013 (eBay Listing No. 370964524900), Rosen discovered that a seller by the name of "stass22" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 8) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the listings, except the September 5 listing (eBay Listing No. 370891803007). True and correct copies of the most recent infringement(s) as they existed on eBay.com on December 14, 2013 are attached to Rosen's Declaration as Exhibit 36. Rosen Decl., ¶ 111.</p>	
<p>108. The September 5, 2013 (eBay Listing No. 370891803007) listing was initially removed in response to Rosen's September 5 notification, but was subsequently deliberately</p>	<p>Disputed. Please see eBay's response to ¶¶ 72-73, 107.</p>

Purported Uncontroverted Fact	eBay's Response
<p>re-posted by eBay itself on October 11, 2013. (See eBay Exhibit A, Exhibit 1 to Dion-Kindem Declaration.) True and correct copies of the September 5 (eBay Listing No. 370891803007) 2013 listing showing that it was not available on September 23 and as the re-posting existed on eBay.com on November 20, 2013 are attached to Rosen's Declaration as Exhibits 37, 38 and 39. Rosen Decl., ¶ 108.</p>	
<p>109. The last known date that the September 8 (eBay Listing No. 370893557558), September 18 (eBay Listing No. 370900915949), October 1 (eBay Listing No. 370909006727), October 14 (eBay Listing No. 370917770610), October 29 (eBay Listing No. 370926685809), November 3 (eBay Listing No. 370934630597), November 13 (eBay Listing No. 370942330920) listings remained</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Disputed. The exhibits referenced show the listings ended and not "active" as Plaintiff alleges.</p> <p>Disputed because Rosen Decl. Exhibits 41 and 42 show listings 370949867363 and 370957582082, neither of which are addressed in paragraph 109, and both of which are shown ended and not "active"</p>

Purported Uncontroverted Fact	eBay's Response
<p>active and available was November 20, 2013. The November 24 (eBay Listing No. 370949867363) listings was last known to be active on December 13, 2013 and the December 9 (eBay Listing No. 370957582082) was last known to be active on December 20, 2013. True and correct copies of the September 8, November 24 listings as they existed on eBay.com on November 20, December 13 and the December 9 listing as it existed on December 20, 2013 with images removed are attached to Rosen's Declaration as Exhibits 40, 41, and 42. Rosen Decl., ¶ 113.</p>	
<p>110. It is unknown when eBay finally removed the December 14 (eBay Listing No. 370964524900) and all of the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 114.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>

1 Purported Uncontroverted Fact	eBay's Response
<p data-bbox="262 255 882 316">C. menofwood infringements</p> <p data-bbox="262 361 882 1396">111. On or about November 28, 2013, Rosen discovered that a seller by the name of "menofwood" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 8) on eBay.com (eBay Listing No. 400615627314). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on November 28, 2013 are attached to Rosen's Declaration as Exhibits 52 and 53. Rosen Decl., ¶ 115.</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 83, 84, 96, 98.
<p data-bbox="262 1396 882 1864">112. On or about December 9, 2013 (eBay Listing No. 400620458209) and December 14, 2013 (eBay Listing No. 400626202206), Rosen discovered that a seller by the name of "menofwood" had again posted an auction on eBay.com with the</p>	Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 8) as was in the November 28, 2013 auction. Rosen reported the infringements to eBay, but it consistently failed to remove the infringements. Rosen Decl., ¶ 116.	
113. The last known date that the November 28 (eBay Listing No. 400615627314) and December 9 (eBay Listing No. 400620458209) listings remained active and available was December 20, 2013. A true and correct copy of the November 28 and December 9 listings as they existed December 20, 2013 on are attached to Rosen's Declaration as Exhibits 54 and 55. Rosen Decl., ¶ 117.	Disputed. Please see eBay's response to ¶¶ 1, 5, 83-85, 96, 98, 111.
114. It is unknown when eBay finally removed all the listings including the December 14 (eBay Listing No. 400626202206) 2013 listing as it has failed to produce such	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
documents in discovery. Rosen Decl., ¶ 118.	
115. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing(s) is reflected on rows 2 and 12 on the 8th page and row 7 on the 9th page of Exhibit B. Rosen Decl., ¶ 119.	Disputed. Please see eBay's response to ¶¶ 31, 87. Disputed. Because these listings had been ended, eBay refunded the then-current listing fees. <i>See</i> Baldwin Opp. Decl. ¶¶ 33, 36, 38; Taylor Opp. Decl. ¶ 20.

13 **WORK 9: JOANNA KRUPA: VA 1-230-935: PUBLISHED WORKS 2001**
14 **PT 1**

15 **A. luki_kulka infringements**

16 116. On or about September 4, 2013,
17 Rosen discovered that a seller by
18 the name of “luki_kulka or
19 luk_kulka” had made and posted an
20 unauthorized copy of one of
21 Rosen’s Joanna Krupa photographs
22 (Work 9) on eBay.com (eBay
23 Listing No. 350868151643). Rosen
24 reported the infringement to eBay,
25 but it failed to remove the

26 Disputed. Please see eBay's response to
27 ¶¶ 1, 5, 60, 63, 88, 100.

Purported Uncontroverted Fact	eBay's Response
<p>1 infringements. True and correct 2 copies of the notice and 3 infringement(s) as they existed on 4 eBay.com on September 4, 2013 are 5 attached to Rosen's Declaration as 6 Exhibits 17 and 18. Rosen Decl., ¶ 7 120.</p>	
<p>9 117. On or about September 13, 2013 10 Rosen discovered that a seller by 11 the name of “luki_kulka or 12 luk_kulka” had again posted an 13 auction on eBay.com (eBay Listing 14 No. 350874891072) with the same 15 unauthorized copy of one of 16 Rosen’s Joanna Krupa photographs 17 (Work 9) as was in the September 4, 18 2013 auction. Rosen reported the 19 infringements to eBay, but it failed 20 to expeditiously remove the 21 infringements. True and correct 22 copies of the notice and 23 infringement(s) as they existed on 24 eBay.com on September 13, 2013 25 are attached to Rosen’s Declaration</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
as Exhibits 19 and 20. Rosen Decl., ¶ 121.		
118. On or about September 15, 2013 (eBay Listing No. 350876008113), October 1, 2013 (eBay Listing No. 350887872004), October 14, 2013 (eBay Listing No. 350898977687), October 29, 2013 (eBay Listing No. 35091146019), November 13, 2013 (eBay Listing No. 350923730134) and December 9, 2013 (eBay Listing No. 350949411898), Rosen discovered that a seller by the name of “luki_kulka or luk_kulka” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 6) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it consistently failed to remove the infringements. Rosen Decl., ¶ 122.	Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s). Further disputed because it is unclear what image(s) Plaintiff refers to in paragraph 118, because the paragraph alleges that a seller posted a copy of “Work 6,” but the other paragraphs in this section appear to address “Work 9.”	

Purported Uncontroverted Fact	eBay's Response
<p>119. The last known date that the 2 September 4 (eBay Listing No. 3 350868151643), September 15 4 (eBay Listing No. 350876008113), 5 October 1 (eBay Listing No. 6 350887872004), October 14 (eBay 7 Listing No. 350898977687), 8 October 29 (eBay Listing No. 9 35091146019), November 13 (eBay 10 Listing No. 350923730134) listings 11 remained active and available was 12 November 20, 2013. The December 13 9 (eBay Listing No. 350949411898) 14 listing was last known to be active 15 on December 20, 2013. Rosen 16 Decl., ¶ 123.</p>	<p>1 Disputed. It is unclear what image(s) 2 Plaintiff refers to in paragraph 119. 3 Further disputed because Plaintiff 4 provides no evidence that the listings 5 referenced in paragraph 119 consist of or 6 contain any of the same image(s) 7 appearing in the listing referenced in 8 paragraph 116. Plaintiff further provides 9 no evidence that any of the listings 10 referenced in paragraph 119 were “active 11 and available on November 20, 2013, 12 December 9, 2013, or December 20, 13 2013.</p>
<p>19 120. It is unknown when eBay finally 20 removed the listings as it has failed 21 to produce such documents in 22 discovery. Rosen Decl., ¶ 124.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>23 121. It should be noted that eBay did 24 at some point remove the image(s) 25 from the December 9 (eBay Listing 26 No. 350949411898) listing. A true</p>	<p>Disputed. Please see eBay's response to ¶¶ 65, 104.</p>

Purported Uncontroverted Fact	eBay's Response
<p>and correct copy of the September 4 listing on November 20, 2013 and the December 9 without the images on December 20, 2013 is attached to Rosen's Declaration as Exhibits 21 and 22. Rosen Decl., ¶ 125.</p>	
<p>B. stass22 infringements</p> <p>122. On or about September 4, 2013, Rosen discovered that a seller by the name of "stass22" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 9) on eBay.com (eBay Listing No. 370885283479). Rosen reported the infringements to eBay and it removed the listing, but then reposted the infringing listing. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013, the listing showing removed on September 23 and the active listing on November 20 are attached to Rosen's Declaration as</p>	<p>Disputed. Please see eBay's response to ¶ 5.</p> <p>Disputed. The exhibits referenced show the listings ended and not "active" as Plaintiff alleges.</p> <p>Disputed that eBay "reposted the infringing listings." Listing no. 370885283479 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on September 6, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Amy Weber. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine</p>

Purported Uncontroverted Fact	eBay's Response
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 Exhibits 32, 33, 34 and 35. Rosen Decl., ¶ 126.	for sale. <i>See</i> Taylor Opp. Decl. ¶ 7.
123. On or about September 5, 2013 (eBay Listing No. 370891803007), September 8, 2013 (eBay Listing No. 370893557558), September 18, 2013 (eBay Listing No. 370900915949), October 1, 2013 (eBay Listing No. 370909006727), October 14, 2013 (eBay Listing No. 370917770610), October 29, 2013 (eBay Listing No. 370926685809), November 3, 2013 (eBay Listing No. 370934630597), November 13, 2013 (eBay Listing No. 370942330920), November 24, 2013 (eBay Listing No. 370949867363), December 9, 2013 (eBay Listing No. 370957582082) and December 14, 2013 (eBay Listing No. 370964524900), Rosen discovered that a seller by the name of "stass22" had again posted an auction on eBay.com with the same	Disputed. Please see eBay's response to ¶¶ 72-73. 107-108.

Purported Uncontroverted Fact	eBay's Response
<p>1 unauthorized copy of one of 2 Rosen's Joanna Krupa photographs 3 (Work 9) as was in the September 4, 4 2013 auction. Rosen reported the 5 infringements to eBay, but it failed 6 to remove the infringements, except 7 the September 5 listing (eBay 8 Listing No. 370891803007). True 9 and correct copies of the most 10 recent infringement(s) as they 11 existed on eBay.com on December 12 14, 2013 are attached to Rosen's 13 Declaration as Exhibit 36. Rosen 14 Decl., ¶ 127.</p>	
<p>124. The September 5 (eBay Listing 17 No. 370891803007) 2013 listing 18 was initially removed in response to 19 Rosen's September 5 notification, 20 but was subsequently deliberately 21 re-posted by eBay itself on October 22 11 (See eBay Exhibit A). True and 23 correct copies of the September 5 24 (eBay Listing No. 370891803007) 25 2013 listing showing that it was not 26</p>	<p>Disputed. Please see eBay's response to ¶¶ 72-73. 107-108, 123.</p>

Purported Uncontroverted Fact	eBay's Response
available on September 23 and as the re-posting existed on eBay.com on November 20, 2013 are attached to Rosen's Declaration as Exhibits 37, 38 and 39. Rosen Decl., ¶ 128.	
125. The last known date that the September 8 (eBay Listing No. 370893557558), September 18 (eBay Listing No. 370900915949), October 1 (eBay Listing No. 370909006727), October 14 (eBay Listing No. 370917770610), October 29 (eBay Listing No. 370926685809), November 3 (eBay Listing No. 370934630597), November 13 (eBay Listing No. 370942330920) listings remained active and available was November 20, 2013. The November 24 (eBay Listing No. 370949867363) listings was last known to be active on December 13, 2013. The December 9 (eBay Listing No. 370957582082) was last known to be active on	Disputed. The listings referenced in the exhibits show listings that ended, and not "active and available" as Plaintiff alleges, and because Plaintiff fails to provide evidence related to the listings referenced in the paragraph. Further, Rosen Decl. Exhibits 41 and 42 show listings 370949867363 and 370957582082, neither of which are addressed in paragraph 125, and both of which are shown ended, and not "active" as Plaintiff alleges.

Purported Uncontroverted Fact	eBay's Response
<p>December 20, 2013. True and correct copies of the September 8, November 24 listings as they existed on eBay.com on November 20, December 13 and the December 9 listing as it existed on December 20, 2013 with images removed are attached to Rosen's Declaration as Exhibits 40, 41, and 42. Rosen Decl., ¶ 129.</p>	
<p>126. It is unknown when eBay finally removed the December 14 (eBay Listing No. 370964524900) and all of the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 130.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>C. menofwood infringements</p> <p>127. On or about November 28, 2013, Rosen discovered that a seller by the name of "menofwood" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 9) on eBay.com (eBay Listing No.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 83, 84, 96, 98, 111, 113.</p>

Purported Uncontroverted Fact	eBay's Response
400615627314). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on November 28, 2013 are attached to Rosen's Declaration as Exhibits 52 and 53. Rr., Pp 131.	
128. On or about December 9, 2013 (eBay Listing No. 400620458209) and December 14, 2013, (eBay Listing No. 400626202206), Rosen discovered that a seller by the name of "menofwood" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 9) as was in the November 28, 2013 auction. Rosen reported the infringements to eBay, but it consistently failed to remove the infringements. Rosen Decl., ¶ 132.	Disputed because Plaintiff fails to provide any evidence that the listings referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
<p>129. The last known date that the November 28 (eBay Listing No. 400615627314) and December 9 (eBay Listing No. 400620458209) listings remained active and available was December 20, 2013. A true and correct copy of the November 28 and December 9 listings as they existed December 20, 2013 on are attached to Rosen's Declaration as Exhibits 54 and 55. Rosen Decl., ¶ 133.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 83-85, 96, 98, 111, 113, 127.</p>
<p>130. It is unknown when eBay finally removed all the listings including the December 14 (eBay Listing No. 400626202206) 2013 listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 134.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>131. eBay received a financial benefit from the infringing listings. (See eBay Exhibit B, Exhibit 2 to Dion- Kindem Declaration.) This listing is reflected on rows 2 and 12 on the</p>	<p>Disputed. Please see eBay's response to ¶¶ 31, 87.</p> <p>Disputed. Because these listings had been ended prematurely, eBay refunded</p>

1 Purported Uncontroverted Fact	eBay's Response
2 8th page and row 7 on the 9th page 3 of Exhibit B. Rosen Decl., ¶ 135. 4	the then-current listing fees. <i>See</i> Baldwin Opp. Decl. ¶¶ 33, 36, 38.
5 WORK 10: JOANNA KRUPA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
6 A. luki_kulka infringements 7 132. On or about September 4, 2013, 8 Rosen discovered that a seller by 9 the name of "luki_kulka or 10 luk_kulka" had made and posted an 11 unauthorized copy of one of 12 Rosen's Joanna Krupa photographs 13 (Work 10) on eBay.com (eBay 14 Listing No. 350868151643). Rosen 15 reported the infringement to eBay, 16 but it failed to remove the 17 infringements. True and correct 18 copies of the notice and 19 infringement(s) as they existed on 20 eBay.com on September 4, 2013 are 21 attached to Rosen's Declaration as 22 Exhibits 17 and 18. Rosen Decl., ¶ 23 136. 24	Disputed. Please see eBay's response to ¶¶ 1, 5, 60, 63, 88, 100, 116.
25 133. On or about September 13, 2013 26 Rosen discovered that a seller by 27	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits

Purported Uncontroverted Fact	eBay's Response
<p>the name of “luki_kulka or luk_kulka” had again posted an auction on eBay.com (eBay Listing No. 350874891072) with the same unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 10) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to expeditiously remove the infringements. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 13, 2013 are attached to Rosen’s Declaration as Exhibits 19 and 20. Rosen Decl., ¶ 137.</p>	<p>referenced consist of or contain any of the same image(s).</p>
<p>134. The last known date that the September 4 (eBay Listing No. 350868151643), listing remained active and available was November 20, 2013. A true and correct copy of the September 4 listing on November 20, 2013 is attached to</p>	<p>Disputed. Please see eBay’s response to ¶ 22. Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>Rosen's Declaration as Exhibit 21.</p> <p>It is unknown when eBay finally removed the listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 138.</p>	
<p>B. kasiaemilia1 infringements</p> <p>135. On or about September 4, 2013, Rosen discovered that a seller by the name of "kasiaemilia1" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 10) on eBay.com (eBay Listing No. 290969661235). Rosen reported the infringement to eBay and it removed the listing, but did not do so expeditiously. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 23 and 24. Rosen Decl., ¶ 139.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 66, 91.</p>

Purported Uncontroverted Fact	eBay's Response
<p>136. On or about September 8, 2013 (eBay Listing No. 290972864370), September 13, 2013 (eBay Listing No. 290977126957), September 23, 2013 (eBay Listing No. 290993511234), October 14, 2013 (eBay Listing No. 291002126570), October 17, 2013 (eBay Listing No. 290997406764), October 24, 2013 (eBay Listing No. 291002126570), October 31, 2013 (eBay Listing No. 291006854769), November 8, 2013 (eBay Listing No. 291010795678), November 13, 2013 (eBay Listing No. 291016052293), November 20, 2013 (eBay Listing No. 291021156614), November 28, 2013 (eBay Listing No. 291026380043), December 9, 2013 (eBay Listing No. 291033829454), and December 16, 2013 (eBay Listing No. 291038564409), Rosen discovered that a seller by the name of "kasiaemilia1" had again posted an auction on eBay.com with the</p>	<p>Disputed. Please see eBay's response to ¶¶ 67-68, 93.</p>

Purported Uncontroverted Fact	eBay's Response
<p>same unauthorized copy of one of Rosen's Joanna Krupa photographs(Work 10) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements except the September 13 listing (eBay Listing No. 290977126957). True and correct copies of the December 9, 2013 infringement(s) and as it existed on eBay.com on December 20 with the images removed attached to Rosen's Declaration as Exhibits 25 and 26. Rosen Decl., ¶ 140.</p>	
<p>137. The September 13, 2013 (eBay Listing No. 290977126957) listing was initially removed in response to Rosen's September 13 notification, but was subsequently deliberately re-posted by eBay itself on October 9. (See eBay Exhibit A, Exhibit 1 to Dion-Kindem Declaration.) True and correct copies of the September</p>	<p>Disputed. Please see eBay's response to ¶¶ 67-68, 93, 136.</p>

Purported Uncontroverted Fact	eBay's Response
<p>13, 2013 (eBay Listing No. 2 290977126957) listing showing that 3 it was not available on September 4 23 and as the re-posting existed on 5 eBay.com on November 20, 2013 6 are attached to Rosen's Declaration 7 as Exhibits 27 and 28. Rosen Decl., 8 ¶ 141.</p>	
<p>138. The last known date that the 1 September 23 (eBay Listing No. 2 290993511234), October 14 (eBay 3 Listing No. 291002126570), 4 October 17 (eBay Listing No. 5 290997406764), October 24 (eBay 6 Listing No. 291002126570), 7 October 31 (eBay Listing No. 8 291006854769), November 8 (eBay 9 Listing No. 291010795678), listings 20 remained active and available was November 20, 2013. The November 21 20 (eBay Listing No. 22 291021156614) and November 28 23 (eBay Listing No. 291026380043) 24 listings were last known to be active</p>	<p>10 Disputed. Please see eBay's response to 11 ¶ 94.</p>

Purported Uncontroverted Fact	eBay's Response
<p>on December 13, 2013. The December 9, 2013 listing (eBay Listing No. 291033829454) was last known to be active on December 20, 2013. True and correct copies of the September 23, November 20 and December 9 listings as they existed on eBay.com on November 20, December 13 and December 20, 2013 are attached to Rosen's Declaration as Exhibits 29, 30 and 31. Rosen Decl., ¶ 142.</p>	
<p>139. It is unknown when eBay finally removed the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 143.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>C. menofwood infringements</p> <p>140. On or about November 28, 2013, Rosen discovered that a seller by the name of "menofwood" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 10) on eBay.com (eBay Listing No.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 83-85, 96, 98, 111, 113, 127, 129.</p>

Purported Uncontroverted Fact	eBay's Response
<p>400615627314). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on November 28, 2013 are attached to Rosen's Declaration as Exhibits 52 and 53. Rosen Decl., ¶ 144.</p>	
<p>141. On or about December 9, 2013 (eBay Listing No. 400620458209) and December 14, 2013 (eBay Listing No. 400626202206), Rosen discovered that a seller by the name of "menofwood" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 10) as was in the November 28, 2013 auction. Rosen reported the infringements to eBay, but it consistently failed to remove the infringements. Rosen Decl., ¶ 145.</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>142. The last known date that the November 28 (eBay Listing No. 400615627314) and December 9 (eBay Listing No. 400620458209) listings remained active and available was December 20, 2013. A true and correct copy of the November 28 and December 9 listings as they existed December 20, 2013 on are attached to Rosen's Declaration as Exhibits 54 and 55. Rr, Dd 146.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5, 83-85, 96, 98, 111, 113, 127, 129, 140.</p>
<p>143. It is unknown when eBay finally removed all the listings including the December 14, 2013 listing (eBay Listing No. 400626202206) listing as it has failed to produce such documents in discovery. Rr, Dd 147.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
<p>144. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion- Kindem Declaration.) These listings are reflected on rows 2 and 12 on</p>	<p>Disputed. Please see eBay's response to ¶¶ 31, 87.</p> <p>Disputed. Because these listings had been ended prematurely, eBay refunded</p>

Purported Uncontroverted Fact	eBay's Response
the 8th page and row 7 on the 9th page of Exhibit B. Rosen Decl., ¶ 149.	the then-current listing fees. <i>See</i> Baldwin Opp. Decl. ¶¶ 33, 36, 38.
WORK 11: JOANNA KRUPA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
<p>A. luki_kulka infringements</p> <p>145. On or about September 4, 2013, Rosen discovered that a seller by the name of “luki_kulka or luk_kulka” had made and posted an unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 11) on eBay.com (eBay Listing No. 350868151643). Rosen reported the infringement to eBay, but it failed to remove the infringements. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen’s Declaration as Exhibits 17 and 18. Rosen Decl., ¶ 149.</p>	<p>Disputed. Please see eBay’s response to ¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>

Purported Uncontroverted Fact	eBay's Response
<p>146. On or about September 13, 2013 2 Rosen discovered that a seller by 3 the name of "luki_kulka or 4 luk_kulka" had again posted an 5 auction on eBay.com (eBay Listing 6 No. number 350874891072) with 7 the same unauthorized copy of one 8 of Rosen's Joanna Krupa 9 photographs (Work 11) as was in 10 the September 4, 2013 auction. 11 Rosen reported the infringements to 12 eBay, but it failed to expeditiously 13 remove the infringements. True and 14 correct copies of the notice and 15 infringement(s) as they existed on 16 eBay.com on September 13, 2013 17 are attached to Rosen's Declaration 18 as Exhibits 19 and 20. Rosen Decl., 19 ¶ 150.</p>	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
<p>22 147. The last known date that the 23 September 4, 2013 listing (eBay 24 Listing No. 350868151643) 25 remained active and available was 26 November 20, 2013. A true and</p>	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
correct copy of the September 4 listing on November 20, 2013 is attached to Rosen's Declaration as Exhibit 21. Rosen Decl., ¶ 151.	
148. It is unknown when eBay finally removed the listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 152.	Disputed. Please see eBay's response to ¶ 22.
<p>B. kasiaemilia1 infringements</p> <p>149. On or about September 4, 2013, Rosen discovered that a seller by the name of "kasiaemilia1" had made and posted an unauthorized copy of one of Rosen's Joanna Krupa photographs (Work 11) on eBay.com (eBay Listing No. 290969661235). Rosen reported the infringement to eBay and it removed the infringement, but did not do so expeditiously. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 66, 91, 135.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
Exhibits 23 and 24. Rosen Decl., ¶ 153.		
150. On or about September 8, 2013 (eBay Listing No. 290972864370), September 13, 2013 (eBay Listing No. 290977126957), September 23, 2013 (eBay Listing No. 290993511234), October 14, 2013 (eBay Listing No. 291002126570), October 17, 2013 (eBay Listing No. 290997406764), October 24, 2013 (eBay Listing No. 291002126570), October 31, 2013 (eBay Listing No. 291006854769), November 8, 2013 (eBay Listing No. 291010795678), November 13, 2013 (eBay Listing No. 291016052293), November 20, 2013 (eBay Listing No. 291021156614), November 28, 2013 (eBay Listing No. 291026380043), December 9, 2013 (eBay Listing No. 291033829454), and December 16, 2013 (eBay Listing No. 291038564409), Rosen		Disputed. Please see eBay's response to ¶¶ 67-68, 93, 136-137.

1 Purported Uncontroverted Fact	eBay's Response
2 discovered that a seller by the name 3 of "kasiaemilia1" had again posted 4 an auction on eBay.com with the 5 same unauthorized copy of one of 6 Rosen's Joanna Krupa photographs 7 (Work 11) as was in the September 8 4, 2013 auction. Rosen reported the 9 infringements to eBay, but it failed 10 to remove the infringements except 11 the September 13 (eBay Listing No. 12 290977126957). True and correct 13 copies of the December 9, 2013 14 infringement(s) and as it existed on 15 eBay.com on December 20 with the 16 images removed attached to 17 Rosen's Declaration as Exhibits 25 18 and 26. Rosen Decl., ¶ 154. 19	
20 151. The September 13 (eBay Listing 21 No. 290977126957) 2013 listing 22 was initially removed in response to 23 Rosen's September 13 notification, 24 but was subsequently deliberately 25 re-posted by eBay itself on October 26 9. (See eBay Exhibit, Exhibit 1 to	Disputed. Please see eBay's response to ¶¶ 67-68, 93, 136-137, 150.

Purported Uncontroverted Fact	eBay's Response
<p>1 Dion-Kindem Declaration.) True 2 and correct copies of the September 3 13, 2013(eBay Listing No. 4 290977126957) listing showing that 5 it was not available on September 6 23 and as the re-posting existed on 7 eBay.com on November 20, 2013 8 are attached to Rosen's Declaration 9 as Exhibits 27 and 28. Rosen Decl., 10 ¶ 155.</p>	
<p>11 12 152. The last known date that the 13 September 23 (eBay Listing No. 14 290993511234), October 14 (eBay 15 Listing No. 291002126570), 16 October 17 (eBay Listing No. 17 290997406764), October 24 (eBay 18 Listing No. 291002126570), 19 October 31 (eBay Listing No. 20 291006854769), November 8 (eBay 21 Listing No. 291010795678), listings 22 remained active and available was 23 November 20, 2013. The November 24 20 (eBay Listing No. 25 291021156614), November 28</p>	Disputed. Please see eBay's response to ¶ 94

1 Purported Uncontroverted Fact	eBay's Response
2 (eBay Listing No. 291026380043) 3 listings was last known to be active 4 on December 13, 2013, and the 5 December 9 (eBay Listing No. 6 291033829454) was last known to 7 be active on December 20, 2013. 8 True and correct copies of the 9 September 23, November 20 and 10 December 9 listings as they existed 11 on eBay.com on November 20, 12 December 13 and December 20, 13 2013 are attached to Rosen's 14 Declaration as Exhibits 29, 30 and 15 31. Rosen Decl., ¶ 156.	
16 153. It is unknown when eBay finally 17 removed the listings as it has failed 18 to produce such documents in 19 discovery. Rosen Decl., ¶ 157.	Disputed. Please see eBay's response to ¶ 22.
21 C. menofwood infringements 22 154. On or about November 28, 2013, 23 Rosen discovered that a seller by 24 the name of "menofwood" had 25 made and posted an unauthorized 26 copy of one of Rosen's Joanna	Disputed. Please see eBay's response to ¶¶ 1, 5, 83-85, 96, 98, 111, 113, 127, 140, 142.

Purported Uncontroverted Fact	eBay's Response
1 Krupa photographs (Work 11) on 2 eBay.com (eBay Listing No. 3 400615627314). Rosen reported the 4 infringement to eBay, but it failed to 5 remove the infringement. True and 6 correct copies of the notice and 7 infringement(s) as they existed on 8 eBay.com on November 28, 2013 9 are attached to Rosen's Declaration 10 as Exhibits 52 and 53. Rosen Decl., 11 ¶ 158. 12	
13 155. On or about December 9, 2013 14 (eBay Listing No. 400620458209) 15 and December 14, 2013 (eBay 16 Listing No. 400626202206), Rosen 17 discovered that a seller by the name 18 of "menofwood" had again posted 19 an auction on eBay.com with the 20 same unauthorized copy of one of 21 Rosen's Joanna Krupa photographs 22 (Work 11) as was in the November 23 28, 2013 auction. Rosen reported 24 the infringements to eBay, but it 25 consistently failed to remove the 26	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

1 2 3 Purported Uncontroverted Fact	eBay's Response
4 5 6 7 8 9 10 11 12 13 14 15 infringements. Rosen Decl., ¶ 159.	
16 17 18 19 20 21 22 23 156. The last known date that the November 28 (eBay Listing No. 400615627314) and December 9 (eBay Listing No. 400620458209) listings remained active and available was December 20, 2013. A true and correct copy of the November 28 and December 9 listings as they existed December 20, 2013 on are attached to Rosen's Declaration as Exhibits 54 and 55. Rosen Decl., ¶ 160.	Disputed. Please see eBay's response to ¶¶ 1, 5, 83-85, 96, 98, 111, 113, 127, 140, 142, 154.
16 17 18 19 20 21 22 23 157. It is unknown when eBay finally removed all the listings including the December 14 (eBay Listing No. 400626202206) 2013 listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 161.	Disputed. Please see eBay's response to ¶ 22.
24 25 26 27 158. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-	Disputed. Please see eBay's response to ¶¶ 31, 87. Disputed. Because these listings had

1 2 3 4 5 6 7 Purported Uncontroverted Fact	eBay's Response
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 Kindem Declaration.) These listings are reflected on rows 2 and 12 on the 8th page and row 7 on the 9th page of Exhibit B. Rosen Decl., ¶ 162.	been ended prematurely, eBay refunded the then-current listing fees. <i>See</i> Baldwin Opp. Decl. ¶¶ 33, 36, 38.
159. On or about July 17, 2014, Rosen discovered that a seller by the name of “menofwood” had again made and posted an unauthorized copy of one of Rosen’s Joanna Krupa photographs (Work 11) on eBay.com (eBay Listing No. 400615627314) after this lawsuit was filed. True and correct copies of the notice and infringement(s) as they existed on eBay.com on July 17, 2014 are attached to Rosen’s Declaration as Exhibits 56 and 57. Rosen Decl., ¶ 163.	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed because paragraph 159 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013. Disputed because Exhibit 57 shows listing number 400743088259 not listing 400615627314 as referenced in paragraph 159.
WORK 12: SOFIA VERGARA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
23 24 25 26 27 A. autry515 infringements 160. On or about September 4, 2013,	Disputed. Please see eBay's response to

Purported Uncontroverted Fact	eBay's Response
<p>Rosen discovered that an eBay seller by the name of “autry515” had made and posted an unauthorized copy of one of Rosen’s Sofia Vergara photographs (Work 12) on eBay.com (eBay Listing No. 181209011280). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen’s Declaration as Exhibits 2 and 3. Rosen Decl., ¶ 164.</p>	<p>¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>
<p>161. On or about September 14, 2013, Rosen discovered that a seller by the name of “autry515” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Sofia Vergara photographs (Work 12) as was in the September 4, 2013 auction</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p>

Purported Uncontroverted Fact	eBay's Response
<p>(eBay Listing No. 181216527316). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 14, 2013 are attached to Rosen's Declaration as Exhibits 4 and 5. Rosen Decl., ¶ 165.</p>	
<p>162. eBay receive a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 7 on the 3rd page of Exhibit B. Rosen Decl., ¶ 166.</p>	<p>Disputed. The magazine that was the subject of Listing ID 181216527316 was sold by the seller before Plaintiff submitted a NOCI for the item. Because the item had been sold and eBay reasonably believed the listing made fair use of the images it contained, eBay did not refund the fees for the item. <i>See</i> Baldwin Opp. Decl. ¶ 27.</p>
<p>163. The last known date that the September 14, 2013 listing remained active and available was November 20, 2013 and shows that the Work was sold for \$6.08. A true</p>	<p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Disputed. The exhibits referenced show</p>

1 Purported Uncontroverted Fact	eBay's Response
2 and correct copies of listing as it 3 existed on eBay.com on November 4 20, 2013 are attached to Rosen's 5 Declaration as Exhibit 6. Rosen 6 Decl., ¶ 167. 7	the listings ended, and not "active" as Plaintiff alleges.
WORK 13: SOFIA VERGARA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
9 A. autry515 infringements 10 164. On or about September 4, 2013, 11 Rosen discovered that an eBay 12 seller by the name of "autry515" 13 had made and posted an 14 unauthorized copy of one of 15 Rosen's Sofia Vergara photographs 16 (Work 13) on eBay.com (eBay 17 Listing No. 181209011280). Rosen 18 reported the infringement to eBay, 19 but it failed to remove the 20 infringement. True and correct 21 copies of the notice and 22 infringement(s) as they existed on 23 eBay.com on September 4, 2013 are 24 attached to Rosen's Declaration as 25 Exhibits 2 and 3. Rosen Decl., ¶ 26	Disputed. Please see eBay's response to ¶¶ 1, 5, 160.

1 Purported Uncontroverted Fact	eBay's Response
2 168.	
3 165. On or about September 14, 2013, 4 Rosen discovered that a seller by 5 the name of "autry515" had again 6 posted an auction on eBay.com with 7 the same unauthorized copy of one 8 of Rosen's Sofia Vergara 9 photographs (Work 13) as was in 10 the September 4, 2013 auction 11 (eBay Listing No. 181216527316). 12 Rosen reported the infringement to 13 eBay, but it failed to remove the 14 infringement. True and correct 15 copies of the notice and 16 infringement(s) as they existed on 17 eBay.com on September 14, 2013 18 are attached to Rosen's Declaration 19 as Exhibits 4 and 5. Rosen Decl., ¶ 20 169. 21	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
22 166. eBay received a financial benefit 23 from this sale and/or listing(s). (See 24 eBay Exhibit B, Exhibit 2 to Dion- 25 Kindem Declaration.) This listing is 26 reflected on row 7 on the 3rd page 27	Disputed. Please see eBay's response to ¶ 162.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
of Exhibit B. Rosen Decl., ¶ 170.		
167. The last known date that the September 14, 2013 listing remained active and available was November 20, 2013 and shows that the Work was sold for \$6.08. A true and correct copies of listing as it existed on eBay.com on November 20, 2013 are attached to Rosen's Declaration as Exhibit 6. Rosen Decl., ¶ 171.	Disputed. Please see eBay's response to ¶ 163.	
168. It is unknown when eBay finally removed the listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 172.	Disputed. Please see eBay's response to ¶ 22.	
B. veteranofwar print infringement 169. On or about September 4, 2013, Rosen discovered that a seller by the name of "veteranofwar" had posted an unauthorized copy of an 8x10 photo print of one of Rosen's Sofia Vergara photographs (Work 13) for sale on eBay.com (eBay	Disputed. Please see eBay's response to ¶¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.	Disputed because Plaintiff fails to provide any evidentiary support for the conclusory statement that "the

1 Purported Uncontroverted Fact	eBay's Response
2 Listing No. 261279279621) and had 3 also made and posted unauthorized 4 copies of said print. Rosen reported 5 the infringement to eBay and the 6 listing was removed, but the 7 unauthorized image file was not 8 removed from eBay's servers. True 9 and correct copies of the notice and 10 infringement(s) as they existed on 11 eBay.com on September 4, 2013 are 12 attached to Rosen's Declaration as 13 Exhibits 7 and 8. Rosen Decl., ¶ 14 173.	unauthorized photos were not removed from eBay's servers." Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. Dec. ¶ 5.
15 170. On or about September 4, 2013, 16 Rosen discovered that a seller by 17 the name of "veteranofwar" had 18 again willfully reposted an 19 unauthorized copy of an 8x10 photo 20 print of one of Rosen's Sofia 21 Vergara photographs (Work 13) for 22 sale on eBay.com (eBay Listing No. 23 number 261279983179) and had 24 also made and posted unauthorized 25 copies of said print. Rosen reported	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. Dec. ¶ 5.

Purported Uncontroverted Fact	eBay's Response
the infringement to eBay and the listing was removed. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 10 and 11. Rosen Decl., ¶ 174.	
171. On or about September 18, 2013, Rosen discovered that a seller by the name of "veteranofwar" had, for the second time, willfully reposted an auction on eBay.com with the same unauthorized copy of one of Rosen's Sofia Vergara photographs (Work 13) as was in the September 4, 2013 auction (eBay Listing No. 261289024520). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 18, 2013 are attached to Rosen's Declaration	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Further disputed because Plaintiff provides no evidentiary support for his characterization of any actions described in paragraph 171 as "willful." Further disputed because Plaintiff fails to provide any evidence that the image appearing in Rosen Decl. Exhibit 15 is the same image as, or in any way connected to, the listings addressed in paragraphs 169, 170, or 171.

1 Purported Uncontroverted Fact	eBay's Response
2 as Exhibits 13 and 14 and of the 3 Jpeg image file as it existed on eBay 4 image servers on September 18 5 2013 is attached to Rosen's 6 Declaration as Exhibit 15. Rosen 7 Decl., ¶ 175. 8	
9 172. The last known date that the 10 image url/links remained active and available was November 20, 2013. 11 A true and correct copy of the 12 images from all three listings as 13 they were still active on eBay's 14 servers on November 20, 2013 is 15 attached to Rosen's Declaration as 16 Exhibits 9, 12 and 16. Rosen Decl., 17 ¶ 176. 18	Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.
19 173. It is unknown when eBay finally 20 removed the image(s) as it has 21 failed to produce such documents in 22 discovery. Rosen Decl., ¶ 177. 23	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
WORK 14: SOFIA VERGARA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
<p>A. autry515 infringements</p> <p>174. On or about September 4, 2013, Rosen discovered that an eBay seller by the name of "autry515" had made and posted an unauthorized copy of one of Rosen's Sofia Vergara photographs (Work 14) on eBay.com (eBay Listing No. 181209011280). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 2 and 3. Rosen Decl., ¶ 178.</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 160, 164.
175. On or about September 14, 2013, Rosen discovered that a seller by the name of "autry515" had again posted an auction on eBay.com with	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
1 2 the same unauthorized copy of one 3 of Rosen's Sofia Vergara 4 photographs (Work 14) as was in 5 the September 4, 2013 auction 6 (eBay Listing No. 181216527316). 7 Rosen reported the infringement to 8 eBay, but it failed to remove the 9 infringement. True and correct 10 copies of the notice and 11 infringement(s) as they existed on 12 eBay.com on September 14, 2013 13 are attached to Rosen's Declaration 14 as Exhibits 4 and 5. Rosen Decl., ¶ 15 179, 16	
176. eBay received a financial benefit 17 from this sale and/or listing(s). (See 18 eBay Exhibit B, Exhibit 2 to Dion- 19 Kindem Declaration.) This listing is 20 reflected on row 7 on page 3 of 21 Exhibit B. Rosen Decl., ¶ 180. 22	Disputed. Please see eBay's response to ¶ 162.
177. The last known date that the 18 September 14, 2013 listing 19 remained active and available was 20 November 20, 2013 and shows that 21 22	Disputed. Please see eBay's response to ¶ 163.

1 Purported Uncontroverted Fact	eBay's Response
2 the Work was sold for \$6.08. A true 3 and correct copies of listing as it 4 existed on eBay.com on November 5 20, 2013 are attached to Rosen's 6 Declaration as Exhibit 6. Rosen 7 Decl., ¶ 181.	
8 178. It is unknown when eBay finally 9 removed the listing as it has failed 10 to produce such documents in 11 discovery. Rosen Decl., ¶ 182.	Disputed. Please see eBay's response to ¶ 22.
13 WORK 15: SOFIA VERGARA: VA 1-230-935: PUBLISHED WORKS 2001 14 PT 1	
15 A. autry515 infringements 16 179. On or about September 4, 2013, 17 Rosen discovered that an eBay 18 seller by the name of "autry515" 19 had made and posted an 20 unauthorized copy of one of 21 Rosen's Sofia Vergara photographs 22 (Work 15) on eBay.com (eBay 23 Listing No. 181209011280). Rosen 24 reported the infringement to eBay, 25 but it failed to remove the 26 infringement. True and correct	Disputed. Please see eBay's response to ¶¶ 1, 5, 160, 164, 174.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Purported Uncontroverted Fact	eBay's Response
copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 2 and 3. Rosen Decl., ¶ 183.	
180. On or about September 14, 2013, Rosen discovered that a seller by the name of "autry515" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Sofia Vergara photographs (Work 15) as was in the September 4, 2013 auction (eBay Listing No. 181216527316). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 14, 2013 are attached to Rosen's Declaration as Exhibits 4 and 5. Rosen Decl., ¶ 184.	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
181. eBay received a financial benefit 2 from this sale and/or listing(s). (See 3 eBay Exhibit B, Exhibit 2 to Dion- 4 Kindem Declaration.) This listing is 5 reflected on row 7 on page 3 of 6 Exhibit B. Rosen Decl., ¶ 185.	Disputed. Please see eBay's response to ¶ 162.
182. The last known date that the September 14, 2013 listing 10 remained active and available was November 20, 2013 and shows that 11 the Work was sold for \$6.08. A true 12 and correct copies of listing as it 13 existed on eBay.com on November 14 20, 2013 are attached to Rosen's 15 Declaration as Exhibit 6. Rosen 16 Decl., ¶ 186.	Disputed. Please see eBay's response to ¶ 163.
183. It is unknown when eBay finally removed the listing as it has failed 20 to produce such documents in 21 discovery. Rosen Decl., ¶ 187.	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
WORK 16: SOFIA VERGARA: VA 1-230-935: PUBLISHED WORKS 2001 PT 1	
<p>A. autry515 infringements</p> <p>184. On or about September 4, 2013, Rosen discovered that an eBay seller by the name of "autry515" had made and posted an unauthorized copy of one of Rosen's Sofia Vergara photographs (Work 16) on eBay.com (eBay Listing No. 181209011280). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 2 and 3. Rosen Decl., ¶ 188.</p>	Disputed. Please see eBay's response to ¶¶ 1, 5, 160, 164, 174, 179.
185. On or about September 14, 2013, Rosen discovered that a seller by the name of "autry515" had again posted an auction on eBay.com with	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

1 Purported Uncontroverted Fact	eBay's Response
2 the same unauthorized copy of one 3 of Rosen's Sofia Vergara 4 photographs (Work 16) as was in 5 the September 4, 2013 auction 6 (eBay Listing No. 181216527316). 7 Rosen reported the infringement to 8 eBay, but it failed to remove the 9 infringement. True and correct 10 copies of the notice and 11 infringement(s) as they existed on 12 eBay.com on September 14, 2013 13 are attached to Rosen's Declaration 14 as Exhibits 4 and 5. Rosen Decl., ¶ 15 189.	
16 186. eBay received a financial benefit 17 from this sale and/or listing(s). (See 18 eBay Exhibit B, Exhibit 2 to Dion- 19 Kindem Declaration.) This listing is 20 reflected on row 7 on page 3 of 21 Exhibit B. Rosen Decl., ¶ 190.	Disputed. Please see eBay's response to ¶ 162.
23 187. The last known date that the 24 September 14, 2013 listing 25 remained active and available was 26 November 20, 2013 and shows that	Disputed. Please see eBay's response to ¶ 163.

1 Purported Uncontroverted Fact	eBay's Response
2 the Work was sold for \$6.08. A true 3 and correct copies of listing as it 4 existed on eBay.com on November 5 20, 2013 are attached to Rosen's 6 Declaration as Exhibit 6. Rosen 7 Decl., ¶ 191.	
8 188. It is unknown when eBay finally 9 removed the listing as it has failed 10 to produce such documents in 11 discovery. Rosen Decl., ¶ 192.	Disputed. Please see eBay's response to ¶ 22.
13 WORK 17: SOFIA VERGARA: VA 1-230-935: PUBLISHED WORKS 2001 14 PT 1	
15 A. autry515 infringements 16 189. On or about September 4, 2013, 17 Rosen discovered that an eBay 18 seller by the name of "autry515" 19 had made and posted an 20 unauthorized copy of one of 21 Rosen's Sofia Vergara photographs 22 (Work 17) on eBay.com (eBay 23 Listing No. 181209011280). Rosen 24 reported the infringement to eBay, 25 but it failed to remove the 26 infringement. True and correct	Disputed. Please see eBay's response to ¶¶ 1, 5, 160, 164, 174, 179, 184.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Purported Uncontroverted Fact	eBay's Response
copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 2 and 3. Rosen Decl., ¶ 193.	
190. On or about September 14, 2013, Rosen discovered that a seller by the name of "autry515" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Sofia Vergara photographs (Work 17) as was in the September 4, 2013 auction (eBay Listing No. 181216527316). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 14, 2013 are attached to Rosen's Declaration as Exhibits 4 and 5. Rosen Decl., ¶ 194.	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
191. eBay received a financial benefit 2 from this sale and/or listing(s). (See 3 eBay Exhibit B, Exhibit 2 to Dion- 4 Kindem Declaration.) This listing is 5 reflected on row 7 on page 3 of 6 Exhibit B. Rosen Decl., ¶ 195.	Disputed. Please see eBay's response to ¶ 162.
192. The last known date that the 2 September 14, 2013 listing 3 remained active and available was 4 November 20, 2013 and shows that 5 the Work was sold for \$6.08. A true 6 and correct copies of listing as it 7 existed on eBay.com on November 8 20, 2013 are attached to Rosen's 9 Declaration as Exhibit 6. Rosen 10 Decl., ¶ 196.	Disputed. Please see eBay's response to ¶ 163.
193. It is unknown when eBay finally 2 removed the listing as it has failed 3 to produce such documents in 4 discovery. Rosen Decl., ¶ 197.	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
WORK 18: JERI RYAN: VA 1-231-031: PUBLISHED WORKS 1997 PT 1	
<p>A. tensistersimages infringements</p> <p>194. On or about September 13, 2013, Rosen discovered that a seller by the name of “tensistersimages” had posted an unauthorized copy of an 8x10 photo print of one of Rosen’s Jeri Ryan photographs (Work 18) for sale on eBay.com and had also made and posted an unauthorized copy(ies) of said print (eBay Listing No. 251338494940). Rosen reported the infringements to eBay and the listing was removed. True and correct copies of the infringement(s) as they existed on eBay.com on September 13, 2013 are attached to Rosen’s Declaration as Exhibit 101 and of the Jpeg image file as it existed on eBay image servers on September 13, 2013 is attached to Rosen’s Declaration as Exhibit 102. Rosen Decl., ¶ 198.</p>	<p>Disputed. Please see eBay’s response to ¶ 1.</p> <p>Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. Dec. ¶ 5.</p>

Purported Uncontroverted Fact	eBay's Response
195. The last known date that the image url/link remained active and available was November 20 2013. A true and correct copy of the image as it was still active on eBay's servers on November 20 2013 is attached to Rosen's Declaration as Exhibit 103. Rosen Decl., ¶ 199. 11 12 13	Disputed. Please see eBay's response to ¶ 1. Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to December 13, 2013. Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
196. It is unknown when eBay finally removed the image as it has failed to produce such documents in discovery. Rosen Decl., ¶ 200. 17 18	Disputed. Please see eBay's response to ¶ 22.
197. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion- Kindem Declaration.) This listing is reflected on row 6 on page 3 of Exhibit B. Rosen Decl., ¶ 201. 25	Disputed. eBay took down Listing ID 251338494940 in response to a NOCI from Plaintiff. Because eBay had ended the listing under its VeRO Program, eBay refunded the fees for the item, amounting to \$US 0.10. See Baldwin Opp. Decl. ¶ 26.

Purported Uncontroverted Fact	eBay's Response
WORK 19: PRISCILLA TAYLOR: VA 1-230-934: PUBLISHED WORKS 2003	
<p>A. stass22 infringements</p> <p>198. On or about September 4, 2013, Rosen discovered that a seller by the name of "stass22" had made and posted an unauthorized copy of one of Rosen's Priscilla Taylor photographs (Work 19) on eBay.com (eBay Listing Nos. 370884146040 and 370877354968). Rosen reported the infringement(s) to eBay, but it failed to remove the infringement(s). True and correct copies of the infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 72 and 73. Rosen Decl., ¶ 202.</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.</p>
<p>199. On or about September 18, 2013, Rosen again sent another notice to eBay for the same Work as September 4, 2013 (eBay Listing No. 370884146040 and</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine</p>

Purported Uncontroverted Fact	eBay's Response
370877354968). Rosen reported the infringements to eBay, but it failed to remove the infringements. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 18, 2013 are attached to Rosen's Declaration as Exhibits 74, 75 and 76. Rosen Decl., ¶ 203.	listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.
200. On or about September 15, 2013 (eBay Listing No. 370897446304), September 18, 2013 (eBay Listing No. 370890410601), September 26, 2013 (eBay Listing No. 370904979249), October 4, 2013 (eBay Listing No. 370912243438), October 14, 2013 (eBay Listing No. 370917866069), November 8, 2013 (eBay Listing No. 370933304566), November 13, 2013 (eBay Listing No. 370940363092), November 22, 2013 (eBay Listing No. 370948288076), December 2, 2013 (eBay Listing No. 370955586687)	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed because paragraph 200 asserts facts not in evidence.

Purported Uncontroverted Fact	eBay's Response
and December 11, 2013 (eBay Listing No. 370962368620), Rosen discovered that a seller by the name of "stass22" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Priscilla Taylor photographs (Work 19) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements. Rosen Decl., ¶ 204.	
201. The last known date that the September 4 (eBay Listing Nos. 370884146040 and 370877354968), September 15 (eBay Listing No. 370897446304), September 18 (eBay Listing No. 370890410601), September 26 (eBay Listing No. 370904979249), October 4 (eBay Listing No. 370912243438), October 14 (eBay Listing No. 370917866069), November 8 (eBay Listing No. 370933304566),	Disputed because Rosen Decl. Exhibits 77, 78, and 79 show listings 370884146040, 370877354968, and 370948288076 ended, and not "active and available" as Plaintiff alleges, and because Plaintiff fails to provide evidence that any of the other listings addressed in paragraph 201 were available on eBay's website as of November 20, 2013, or December 20, 2013.

1 Purported Uncontroverted Fact	eBay's Response
2 November 22 (eBay Listing No. 3 370948288076), December 2 (eBay 4 Listing No. 370955586687) listings 5 remained active and available was 6 November 20, 2013. The November 7 22 (eBay Listing No. 8 370948288076), December 2 (eBay 9 Listing No. 370955586687) listings 10 were last known to be active on 11 December 20, 2013. True and 12 correct copies of September 4 and 13 November 22 listings as they 14 existed on eBay.com on November 15 20, December 20 are attached to 16 Rosen's Declaration as Exhibits 77, 17 78 and 79. Rosen Decl., ¶ 205. 18	
19 202. It is unknown when eBay finally 20 removed the December 11 (eBay 21 Listing No. 370962368620) and all 22 of the listings as it has failed to 23 produce such documents in 24 discovery. Rosen Decl., ¶ 206.	Disputed. Please see eBay's response to ¶ 22.

1 Purported Uncontroverted Fact	eBay's Response
<p data-bbox="262 276 882 361">B. kasiaemilia1 Infringements after the Second Amended Complaint</p> <p data-bbox="262 382 882 1453">203. Even though eBay did institute first a 30-day and then a 12-month suspension, against “kasiaemilia1,” it then reinstated the account on December 3, 2013 leading to further infringements. On or about January 7, 2014, Rosen discovered that this seller had made and posted an unauthorized copy of one of Rosen’s Priscilla Taylor photographs (Work 19) on eBay.com. True and correct copies of the infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen’s Declaration as Exhibit 80. Rosen Decl., ¶ 207.</p>	<p data-bbox="882 382 1553 466">Disputed. Please see eBay's response to ¶¶ 1, 5.</p> <p data-bbox="882 508 1553 819">Disputed because Plaintiff provides no evidence to support his characterization of eBay's reinstatement of the referenced account as “leading to further infringements.”</p> <p data-bbox="882 861 1553 1881">On November 29, 2013, eBay suspended the account of user kasiaemilia1 for 12 months because, according to VeRO records, the account had received an excessive number of valid takedown requests. However, eBay subsequently determined that the takedowns, all of which were for magazine listings, had been made in error, since the seller had made a fair use of the images contained in the listing. eBay believes that sellers have a right to accurately depict the items they are offering for sale, and that potential buyers have a right to see the items they are considering purchasing. Accordingly, eBay removed the account</p>

1 2 3 4 Purported Uncontroverted Fact	eBay's Response
	suspension on December 3, 2013. <i>See</i> Taylor Opp. Decl. ¶ 14.
WORK 20: PRISCILLA TAYLOR: VA 1-230-934: PUBLISHED WORKS 2003 PT 1	
A. stass22 infringements 204. On or about September 4, 2013, Rosen discovered that a seller by the name of "stass22" had made and posted an unauthorized copy of one of Rosen's Priscilla Taylor photographs (Work 20) on eBay.com (eBay Listing Nos. 370884146040 and 370877354968). Rosen reported the infringement(s) to eBay, but it failed to remove the infringement(s). True and correct copies of the infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen's Declaration as Exhibits 72 and 73. Rosen Decl., ¶ 208.	Disputed. Please see eBay's response to ¶¶ 1, 5. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.
205. On or about September 18, 2013, Rosen again sent another notice to eBay for the same Work as	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the

1 Purported Uncontroverted Fact	eBay's Response
2 September 4, 2013 (eBay Listing 3 Nos. 370884146040 and 4 370877354968). Rosen reported the 5 infringement(s) to eBay, but it 6 failed to remove the 7 infringement(s). True and correct 8 copies of the notice and 9 infringement(s) as they existed on 10 eBay.com on September 18, 2013 11 are attached to Rosen's Declaration 12 as Exhibits 74, 75 and 76. Rosen 13 Decl., ¶ 209. 14	same image(s).
15 206. On or about September 15, 2013 16 (eBay Listing No. 370897446304), 17 September 18, 2013 (eBay Listing No. 370890410601), September 26, 18 2013 (eBay Listing No. 19 370904979249), October 4, 2013 20 (eBay Listing No. 370912243438), 21 October 14, 2013 (eBay Listing No. 22 370917866069), November 8, 2013 23 (eBay Listing No. 370933304566), 24 November 13, 2013 (eBay Listing 25 No. 370940363092), November 22, 26	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
<p>2013 (eBay Listing No. 370948288076), December 2, 2013 (eBay Listing No. 370955586687) and December 11, 2013 (eBay Listing No. 370962368620), Rosen discovered that a seller by the name of "stass22" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Priscilla Taylor photographs (Work 20) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements. Rosen Decl., ¶ 210.</p>	
207. The last known date that the September 4 (eBay Listing Nos. 370884146040 and 370877354968), September 15 (eBay Listing No. 370897446304), September 18 (eBay Listing No. 370890410601), September 26 (eBay Listing No. 370904979249), October 4 (eBay Listing No. 370912243438),	Disputed. Please see eBay's response to ¶ 201.

Purported Uncontroverted Fact	eBay's Response
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 October 14 (eBay Listing No. 370917866069), November 8 (eBay Listing No. 370933304566), November 22 (eBay Listing No. 370948288076), December 2 (eBay Listing No. 370955586687) listings remained active and available was November 20, 2013. The November 22 (eBay Listing No. 370948288076), December 2 (eBay Listing No. 370955586687) listings were last known to be active on December 20, 2013. True and correct copies of September 4 and November 22 listings as they existed on eBay.com on November 20, December 20 are attached to Rosen's Declaration as Exhibits 77, 78 and 79. Rosen Decl., ¶ 211.	
208. It is unknown when eBay finally removed the December 11 (eBay Listing No. 370962368620) and all of the listings as it has failed to produce such documents in	Disputed. Please see eBay's response to ¶ 22.

1 Purported Uncontroverted Fact	eBay's Response
2 discovery. Rosen Decl., ¶ 212.	
B. kasiaemilia1 Infringements after the Second Amended Complaint 209. Even though eBay did institute first a 30-day and then a 12-month suspension, against “kasiaemilia1,” it then inexplicably reinstated the account on December 3, 2013 leading to further infringements. On or about January 7,, 2014, Rosen discovered that this seller had made and posted an unauthorized copy of one of Rosen’s Priscilla Taylor photographs (Work 20) on eBay.com. True and correct copies of the infringement(s) as they existed on eBay.com on September 4, 2013 are attached to Rosen’s Declaration as Exhibit 80. Rosen Decl., ¶ 213.	Disputed. Please see eBay's response to ¶¶ 1, 5, 203.
WORK 21: DAISY FUENTES: VA 1-239-762: PUBLISHED WORKS 2003 PT 2	
A. aitx infringements 210. On or about October 2, 2013,	Disputed. Please see eBay's response to

1 Purported Uncontroverted Fact	eBay's Response
2 Rosen discovered that a seller by 3 the name of “aitx” had posted an 4 unauthorized copy of an 8x10 photo 5 print of one of Rosen’s Daisy 6 Fuentes photographs (Work 21) for 7 sale on eBay.com and had also 8 made and posted an unauthorized 9 copy(ies) of said print (eBay Listing 10 No. 151135225016). Rosen reported 11 the infringement to eBay and the 12 listing was removed. True and 13 correct copies of the infringement(s) 14 as they existed on eBay.com on 15 October 2, 2013 are attached to 16 Rosen’s Declaration as Exhibits 81 17 and of the Jpeg image file as it 18 existed on eBay image servers on 19 October 2, 2013 is attached to 20 Rosen’s Declaration as Exhibit 82. 21 Rosen Decl., ¶ 213.	¶ 1. Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Undisputed that Rosen reported the 8x10 Photo listing to eBay and eBay took down the listing. <i>See</i> Baldwin Opp. Dec. ¶ 5.
22 23 211. The last known date that the 24 image url/link remained active and 25 available was November 20 2013. A 26 true and correct copy of the image	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
	as it was still active on eBay's servers on November 20 2013 is attached to Rosen's Declaration as Exhibit 83. Rosen Decl., ¶ 214.	Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.
	212. It is unknown when eBay finally removed the infringing image file as it has failed to produce such documents in discovery. Rosen Decl., ¶ 215.	Disputed. Please see eBay's response to ¶ 22.
WORK 22: DAISY FUENTES: VAU692-230: DAISY FUENTES		
A. aitx infringements 213. On or about October 2, 2013, Rosen discovered that a seller by the name of "aitx" had posted an unauthorized copy of an 8x10 photo print of one of Rosen's Daisy Fuentes photographs (Work 22) for sale on eBay.com and had also made and posted an unauthorized copy(ies) of said print (eBay Listing No. 400582417916). Rosen reported the infringement to eBay and the		Disputed. Please see eBay's response to ¶¶ 1, 4. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. Undisputed that Rosen reported the 8x10 Photo listing to eBay and eBay took down the listing. <i>See</i> Baldwin Opp. Dec. ¶ 5.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
listing was removed. Rosen Decl., ¶ 216.		Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
214. True and correct copies of the infringement(s) as they existed on eBay.com on October 2, 2013 are attached to Rosen's Declaration as Exhibits 84 and of the Jpeg image file as it existed on eBay image servers on October 2, 2013 is attached to Rosen's Declaration as Exhibit 85. Rosen Decl., ¶ 217.		Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
215. The last known date that the image url/link remained active and available was November 20, 2013. A true and correct copy of the image as it was still active on eBay's servers on November 20, 2013 is attached to Rosen's Declaration as Exhibit 86. Rosen Decl., ¶ 218.		Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.
216. It is unknown when eBay finally removed the image as it has failed to produce such documents in		Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
discovery. Rosen Decl., ¶ 219.	
WORK 23: TAWNY KITAEN: VA 1-230-940: PUBLISHED WORKS 1995 PT 1	
A. philcobb infringements 217. On or about September 27, 2013, Rosen discovered that a seller by the name of "philcobb" had posted or been posting multiple auctions with an unauthorized copy of an 8x10 photo print of one of Rosen's Tawny Kitaen photographs (Work 23) for sale on eBay.com and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed. True and correct copies of one of the listings/ infringement(s) as they existed on eBay.com on September 27, 2013 are attached to Rosen's Declaration as Exhibits 104 and of the Jpeg image file as it existed on eBay image servers on 27, 2013 is attached to Rosen's Declaration as	Disputed. Please see eBay's response to ¶ 1. Disputed. Plaintiff provides no evidence of any "Jpeg image file" connected to the listing addressed in paragraph 217. Rosen Decl. Exhibit 104 is a screenshot of listing 181226089076. Undisputed that Rosen reported the 8x10 Photo listing to eBay on a Friday and eBay took down the listing that Sunday. <i>See</i> Baldwin Opp. Dec. ¶ 5; Taylor Opp. Decl. ¶ 17.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
Exhibit 104. Rosen Decl., ¶ 220.		
218. The last known date that the image url/link remained active and available was November 20, 2013. A true and correct copy of the image as it was still active on eBay's servers on November 20, 2013 is attached to Rosen's Declaration as Exhibit 106. Rosen Decl., ¶ 221.	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.	
219. It is unknown when eBay finally removed the image as it has failed to produce such documents in discovery. Rosen Decl., ¶ 222.	Disputed. Please see eBay's response to ¶ 22.	
WORK 24: GENA LEE NOLIN: VA 1-230-933: PUBLISHED WORKS 2000 PT 1		
A. 1stchoicephotosandposters infringements 220. On or about September 27, 2013, Rosen discovered that a seller by the name of "1stchoicephotosandposters" had posted an unauthorized copy of an 8x10 photo print utilizing of one of	Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. Undisputed that Rosen reported the 8x10 Photo listing to eBay on a Friday and	

1 Purported Uncontroverted Fact	eBay's Response
2 Rosen's Gena Lee Nolin 3 photographs (Work 24) for sale on 4 eBay.com (eBay Listing No. 5 370908300111) and had also made 6 and posted an unauthorized 7 copy(ies) of said print. Rosen 8 reported the infringements to eBay 9 and the listing was removed. Rosen 10 Decl., ¶ 223.	eBay took down the listing that Sunday. <i>See</i> Baldwin Opp. Dec. ¶ 5; Taylor Opp. Decl. ¶ 17.
11 221. True and correct copies of the 12 infringement(s) as they existed on 13 eBay.com on September 27, 2013 14 are attached to Rosen's Declaration 15 as Exhibits 126 and of the Jpeg 16 image file as it existed on eBay 17 image servers on September 27, 18 2013 is attached to Rosen's 19 Declaration as Exhibit 127. Rosen 20 Decl., ¶ 224.	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
22 222. It is unknown if or when the 23 unauthorized image files were 24 removed from eBay's servers. 25 Rosen Decl., ¶ 225.	Disputed. Plaintiff has failed to provide any evidence that the image referenced remained on eBay's servers after September 27, 2013.

Purported Uncontroverted Fact	eBay's Response
223. eBay received a financial benefit 3 from the listing. (See eBay Exhibit 4 B, Exhibit 2 to Dion-Kindem 5 Declaration. This listing is reflected 6 on row 11 on the 4th page of 7 Exhibit B. Rosen Decl., ¶ 226.	Disputed. Please see eBay's response to ¶ 31. Disputed. eBay took down Listing ID 370908300111 in response to a NOCI from Plaintiff. Because eBay had ended the listing under its VeRO Program, eBay refunded the fees for the item, amounting to \$US 0.10. <i>See</i> Baldwin Opp. Decl. ¶ 28.
WORK 25: ANNA KOURNIKOVA: VA 1-239-760: ANNA KOURNIKOVA 14	
A. westcoastrackers infringements 224. On or about September 18, 2013, Rosen discovered that a seller by the name of "westcoastrackers" had willfully re-posted an unauthorized copy of an 8x10 photo print utilizing of one of Rosen's Anna Kournikova photographs (Work 25) for sale on eBay.com (eBay Listing No. 151124754041) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay	Disputed. Please see eBay's response to ¶ 1. Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Further disputed because Plaintiff provides no evidence to support the statement "westcoastrackers should have been made aware at that time of the infringement."

1 Purported Uncontroverted Fact	eBay's Response
2 and the listing was removed. The 3 Work had been previously posted 4 on eBay by westcoastrackers on 5 April 27, 2012 and had been 6 removed at or around that time, and 7 westcoastrackers should have been 8 made aware at that time of the 9 infringement. True and correct 10 copies of the notice and 11 infringement(s) as they existed on 12 eBay.com on September 18, 2013 13 are attached to Rosen's Declaration 14 as Exhibits 118 and 119 and of the 15 Jpeg image file as it existed on eBay 16 image servers on September 18, 17 2013 is attached to Rosen's 18 Declaration as Exhibit 120, along 19 with the notice and April 27, 2012 20 infringement are attached to 21 Rosen's Declaration as Exhibits 122 22 and 123. Rosen Decl., ¶ 228. 23	Undisputed that Rosen reported the 8x10 Photo listing to eBay and eBay took down the listing. <i>See</i> Baldwin Opp. Dec. ¶ 5.
24 25 26 27 28 225. The last known date that the image url/link remained active and available was October 2, 2013. A	Disputed. Please see eBay's response to ¶ 1. Disputed. Plaintiff fails to provide any

1 Purported Uncontroverted Fact	eBay's Response
2 true and correct copy of the image 3 as it was still active on eBay's 4 servers on October 2, 2013 is 5 attached to Rosen's Declaration as 6 Exhibit 120. Rosen Decl., ¶ 229. 7 8 9	evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to October 2, 2013.
10 226. It is unknown when eBay finally 11 removed the image as it has failed 12 to produce such documents in 13 discovery. Rosen Decl., ¶ 230.	Disputed. Please see eBay's response to ¶ 22.
14 B. khw infringement 15 227. On or about November 18, 2013, 16 Rosen discovered that a seller by 17 the name of "khw" had posted an 18 unauthorized copy of an copy of an 19 8x10 photo print utilizing of one of 20 Rosen's Anna Kournikova 21 photographs (Work 25) for sale on 22 eBay.com (eBay Listing No. 23 360797804154) and had also made 24 and posted an unauthorized 25 copy(ies) of said print. Rosen 26	Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. Undisputed that Rosen reported the 8x10 Photo listing to eBay and eBay took down the listing. <i>See</i> Baldwin Opp. Dec. ¶ 5.

1 Purported Uncontroverted Fact	eBay's Response
2 reported the infringements to eBay 3 and the listing was removed. True 4 and correct copies of the 5 infringement(s) as they existed on 6 eBay.com on November 18, 2013 7 are attached to Rosen's Declaration 8 as Exhibits 124. Rosen Decl., ¶ 231. 9	
10 228. The last known date that the 11 image url/link remained active and available was November 22, 2013. 12 A true and correct copy of the 13 image as it was still active on 14 eBay's servers on November 22, 15 2013 is attached to Rosen's 16 Declaration as Exhibit 125. Rosen 17 Decl., ¶ 232. 18 19 20 21 22 23 24 25	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 22, 2013. Further disputed because Plaintiff fails to provide any evidence that the image addressed in paragraph 228 and shown at Rosen Decl. Exhibit 125 has ever resided on eBay's website, as it appears to have a URL at photobucket.com.

1 Purported Uncontroverted Fact	eBay's Response
2 3 4 5 6 229. It is unknown when eBay finally removed the image as it has failed to produce such documents in discovery. Rosen Decl., ¶ 233.	Disputed. Please see eBay's response to ¶ 22.
7 8 9 10 11 12 230. eBay received a financial benefit from the sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion- Kindem Declaration.) This listing is reflected on row 11 on the 7th page of Exhibit B. Rosen Decl., ¶ 234. 13 14 15	Disputed. Please see eBay's response to ¶ 31. Disputed. eBay took down Listing ID 360797804154 in response to a NOCI from Plaintiff. Because eBay had ended the listing under its VeRO Program, eBay refunded the fees for the item, amounting to \$US 0.05. <i>See</i> Baldwin Opp. Decl. ¶ 32.

16
17 **WORK 26: GENA LEE NOLIN: VA 1-230-948: GENA LEE NOLIN 11**

18 A. superstargallery infringements	
19 20 21 22 23 24 25 26 27 231. On or about October 14, 2013, Rosen discovered that a seller by the name of "superstargallery" had posted an unauthorized copy of an copy of an 8x10 photo print utilizing of one of Rosen's Gena Lee Nolin photographs (Work 26) for sale on eBay.com (eBay Listing	Disputed. Please see eBay's response to ¶ 1, 4. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the

1 Purported Uncontroverted Fact	eBay's Response
2 No. 261304359887) and had also 3 made and posted an unauthorized 4 copy (ies) of said print. Rosen 5 reported the infringements to eBay 6 and the listing was removed. True 7 and correct copies of the 8 infringement(s) as they existed on 9 eBay.com on October 14, 2013 are 10 attached to Rosen's Declaration as 11 Exhibit 128 and of the Jpeg image 12 file as it existed on eBay image 13 servers on October 14, 2013 is 14 attached to Rosen's Declaration as 15 Exhibit 129. Rosen Decl., ¶ 235.	same image(s). Undisputed that Rosen reported the 8x10 Photo listing to eBay and eBay took down the listing. <i>See</i> Baldwin Opp. Dec. ¶ 5.
16 232. The last known date that the 17 image url/link remained active and 18 available was November 20, 2013. 19 A true and correct copy of the 20 image as it was still active on 21 eBay's servers on November 20, 22 2013 is attached to Rosen's 23 Declaration as Exhibit 130. Rosen 24 Decl., ¶ 236.	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.

1 Purported Uncontroverted Fact	eBay's Response
2 3 4 5 6 233. It is unknown when eBay finally removed the image as it has failed to produce such documents in discovery. Rosen Decl., ¶ 237.	7 8 9 10 11 12 13 Disputed. Please see eBay's response to ¶ 22. 14 15 16 17 18 19 20 21 22 23 24 25 26
27 28 234. On or about November 4, 2013, Rosen discovered that Worthpoint.com had posted an unauthorized copy of a copy of an 8x10 photo print utilizing of one of Rosen's Gena Lee Nolin photographs (Work 26) that had been offered for sale and sold on eBay.com. Based on the information contained on both worthpoint.com and eBay.com, it is apparent to Rosen that eBay unlawfully licensed the photo to worthpoint.com and that eBay had sold the Work. True and correct copies of the infringement(s) as they existed on worthpoint.com on November 4, 2013, along with copies of Worthpoint's Work removal request form and press	Disputed. Plaintiff provides no evidence for the statement that "it is apparent to Rosen that eBay unlawfully licensed the photo to worthpoint.com and that eBay had sold the Work," which is entirely conjecture. Disputed. eBay does not sell products on its website but instead enables users and merchants to offer their inventory. <i>See</i> eBay's 56-1 ¶ 13; Talgo SJ Decl. ¶ 2. Disputed because there is no evidence that Terapeak is eBay's "apparent agent."

1 Purported Uncontroverted Fact	eBay's Response
2 release showing that eBay licenses 3 photos to Worthpoint via its 4 apparent agent Terapeak (formally 5 Advanced Ecommerce Research 6 Systems) are attached to Rosen's 7 Declaration as Exhibits 173, 169 8 and 170. Rosen Decl., ¶ 238. 9	
WORK 27: ALI LANDRY: VAU660-263: ALI LANDRY	
A. Worthpoint infringement 235. On or about November 4, 2013, Rosen discovered that Worthpoint.com had posted an unauthorized copy of a copy of an 8x10 photo print utilizing of one of Rosen's Ali Landry photographs (Work 27) that had been offered for sale and sold on eBay.com. Based on the information contained on both worthpoint.com and eBay.com, it is apparent to Rosen that eBay unlawfully licensed the photo to worthpoint.com and that eBay had sold the Work. True and correct copies of the infringement(s) as they	Disputed. It is unclear what is referred to in paragraph 235, because paragraph 235 references "one of Rosen's Ali Landry photographs (Work 27)" but Rosen Decl. Ex. 172 appears to show a photograph of Gena Lee Nolin. Further disputed because Plaintiff provides no evidence for the statement that "it is apparent to Rosen that eBay unlawfully licensed the photo to worthpoint.com and that eBay had sold the Work," which is entirely conjecture. Disputed. eBay does not sell products on its website but instead enables users and merchants to offer their inventory. <i>See</i>

Purported Uncontroverted Fact	eBay's Response
1 existed on worthpoint.com on 2 November 4, 2013, along with 3 copies of Worthpoint's Work 4 removal request form and press 5 release showing that eBay licenses 6 photos to Worthpoint via its 7 apparent agent Terapeak (formally 8 Advanced Ecommerce Research 9 Systems) are attached to Rosen's 10 Declaration as Exhibits 172, 169 11 and 170. Rosen Decl., ¶ 239. 12	eBay's 56-1 ¶ 13; Talgo SJ Decl. ¶ 2. Disputed because there is no evidence that Terapeak is eBay's "apparent agent."
B. dave-charles-art infringement 13 236. On or about October 17, 2013, 14 Rosen discovered that a seller by 15 the name of "dave-charles-art" had 16 posted an unauthorized copy of an 17 copy of an 8x10 photo print 18 utilizing of one of Rosen's Ali 19 Landry photographs (Work 27) for 20 sale on eBay.com (eBay Listing No. 21 310771160208) and had also made 22 and posted an unauthorized 23 copy(ies) of said print. Rosen 24 reported the infringements to eBay 25 26	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Undisputed that Rosen reported the 8x10 Photo listing to eBay and eBay took down the listing. <i>See</i> Baldwin Opp. Dec. ¶ 5.

1 Purported Uncontroverted Fact	eBay's Response
2 and the listing was removed. True 3 and correct copies of the 4 infringement(s) as they existed on 5 eBay.com on October 17, 2013 are 6 attached to Rosen's Declaration as 7 Exhibits 131 and of the Jpeg image 8 file as it existed on eBay image 9 servers on October 17, 2013 is 10 attached to Rosen's Declaration as 11 Exhibit 132. Rosen Decl., ¶ 240. 12	
13 237. The last known date that the 14 image url/link remained active and available was November 20, 2013. 15 A true and correct copy of the 16 image as it was still active on 17 eBay's servers on November 20, 18 2013 is attached to Rosen's 19 Declaration as Exhibit 133. Rosen 20 Decl., ¶ 241. 21	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.
22 238. It is unknown when eBay finally 24 removed the image as it has failed 25 to produce such documents in 26 discovery. Rosen Decl., ¶ 242. 27	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
239. eBay received a financial benefit to eBay from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 13 on the 5th page of Exhibit B. Rosen Decl., ¶ 243.	Disputed. eBay took down Listing ID 310771160208 in response to a NOCI from Plaintiff. Because the listing had been ended by eBay under its VeRO Program, eBay refunded all fees for the item, including the insertion fee and any applicable listing upgrade or supplemental service fees. <i>See</i> Baldwin Opp. Decl. ¶ 29.
WORK 28: ANGELA TAYLOR: VA 1-289-516: PUBLISHED WORKS 2004 PT 2	
A. kevol44 infringement	<p>240. On or about October 20, 2013, Rosen discovered that a seller by the name of "kevol44" had made and posted an unauthorized copy of one of Rosen's Angela Taylor photographs (Work 28) on eBay.com (eBay Listing No. 380434485602). Rosen reported the infringement to eBay. eBay initially removed the Work and then willfully re-posted it on October 21, 2013. (See eBay Exhibit A, Exhibit</p> <p>Disputed. Please see eBay's response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Disputed. Listing no. 380434485602 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on or about October 20, 2013. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller, in offering an old magazine for sale, had made a fair use of the images</p>

Purported Uncontroverted Fact	eBay's Response
1 to Dion-Kindem Declaration.) True and correct copies of the infringement(s) as they existed on eBay.com on October 20, 2013 and the email showing the removal and the re-posted Work online as of November 25, 2013 are attached to Rosen's Declaration as Exhibits 87, 88 and 89. Rosen Decl., ¶ 244.	contained in the listing. eBay believes that sellers have a right to accurately depict the items they are offering for sale, and that potential buyers have a right to see the items they are considering purchasing. <i>See</i> Taylor Opp. Decl. ¶ 11. Disputed because Rosen Decl. Exhibit 89 shows listing 380434485602 ended, and not "re-posted" as Plaintiff alleges.
241. On or about October 29, 2013, Rosen discovered that a seller by the name of "kevol44" had again willfully reposted an auction on eBay.com with the same unauthorized copy of one of Rosen's Angela Taylor photographs (Work 28) as was in the October 20, 2013 auction (eBay Listing No. 380753700105). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of notice, October 29, 2013 listing as it existed on eBay.com on December 20 are	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Further disputed because Plaintiff provides no evidentiary support for his characterization of any actions described in paragraph 241 as "willful."

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
attached to Rosen's Declaration as Exhibits 90 and 91. Rosen Decl., ¶ 245.		
242. It is unknown when eBay finally removed the listing as it has failed to produce such documents in discovery. Rosen Decl., ¶ 246.	Disputed. Please see eBay's response to ¶ 22.	
243. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 2 on the 1st page and row 6 of the 6th page of Exhibit B. Rosen Decl., ¶ 247.	Disputed. eBay refunded the then-current listing fees, including the insertion fee and any applicable listing upgrade or supplemental service fees, in the amount of \$US 0.05. <i>See</i> Baldwin Opp. Decl. ¶¶ 22, 30.	
B. backissuemagazinesnew infringement 244. On or about November 20, 2013, Rosen discovered that a seller by the name of "backissuemagazinesnew" had made and posted an unauthorized copy of one of Rosen's Angela Taylor photographs (Work 28) on eBay.com (eBay Listing No.	Disputed. Please see eBay's response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an	

Purported Uncontroverted Fact	eBay's Response
180596330604). Rosen reported the infringement to eBay, but eBay failed to remove the infringement. True and correct copies of the infringement(s) as they existed on eBay.com on November 20, 2013 are attached to Rosen's Declaration as Exhibits 92. Rosen Decl., ¶ 248.	infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.
245. On or about March 20, 2014, Rosen send a second notice for the same Work that Rosen had reported to eBay on November 20, 2013 (eBay Listing No. 180596330604) as eBay had allowed the Work to remain for sale in violation of its own terms and conditions due to the fact that it had removed the image from the listing. Because it had failed to fully remove the listing, or all images related to the listing, an infringing copy of the image remained available in search results. eBay failed to take steps to remove after receiving the second notice	Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed because listing no. 180596330604 was a magazine listing that was posted on December 4, 2010, and ended on March 31, 2014. <i>See</i> Taylor Opp. Decl. ¶ 14.

Purported Uncontroverted Fact	eBay's Response
until March 30, 2014. True and correct copies of notice, the listing as it existed on March 20, 2014, and the March 30, 2014 removal email from eBay are attached to Rosen's Declaration as Exhibits 93, 94 and 95. Rosen Decl., ¶ 249.	
246. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 1 on the 1st page of Exhibit B. Rosen Decl., ¶ 250.	Disputed. Listing ID 180596330604 was listed on a Good 'Til Cancelled basis. eBay administratively ended this listing as a courtesy to the seller, since eBay considered it likely that the listing would be the subject of litigation and wished to minimize its user's exposure to such litigation. Because eBay had administratively ended the listing, it refunded the most recent listing fee, in the amount of \$US 0.05. <i>See</i> Baldwin Opp. Decl. ¶ 21.
247. On or about June 22, 2014, Rosen discovered that a seller by the name of "backissuemagazinesnew" had made and posted an unauthorized	Disputed because it is unclear what the paragraph is referring to. Disputed because Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the

1 Purported Uncontroverted Fact	eBay's Response
2 copy of one of Rosen's Gena Lee 3 Nolin photographs on eBay.com 4 (eBay Listing No. 171363513827). 5 This was the 14th infringement of 6 Rosen's photographic works by this 7 seller and the 15th notice. True and 8 correct copies of the notice and 9 infringement(s) as they existed on 10 eBay.com on June 22, 2014 are 11 attached to Rosen's Declaration as 12 Exhibits 98 and 99. Rosen Decl., ¶ 13 251. 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	same image(s). Disputed because Plaintiff provides no evidence that the image appearing in Rosen Decl. Exhibit 99 consists of or contains any of the images at issue in this lawsuit. The exhibits cited are screenshots of images dated months after the period of time at issue in this lawsuit. Further disputed because Plaintiff provides no evidence to support the statement "This was the 14th infringement of Rosen's photographic works by this seller and the 15th notice." Further disputed because Plaintiff provides no evidence that the listing addressed in paragraph 247 was ever previously listed on eBay's website or is connected to any of the listings addressed in Plaintiff's Second Amended Complaint.
C. kevol44 and backissuemagazinesnew on Google 248. On or about November 20, 2013, Rosen discovered the images related	Disputed. Plaintiff provides no evidence that any of the images displayed in Rosen

Purported Uncontroverted Fact	eBay's Response
to the “kevol44” and “backissuemagazinesnew” listings were displayed in google images search results. True and correct copies of the in google images search results on November 20, 2013 are attached to Rosen’s Declaration as Exhibit 100. Rosen Decl., ¶ 252.	Decl. Exhibit 100 appeared on eBay’s website at any time. Disputed. Any images returned by Google as a result of such a search would be provided entirely by Google, using thumbnails stored on Google’s servers. <i>See Spickler Opp. Decl. ¶ 20.</i>
WORK 29: NATALIA SOKOLOVA: VA 1-230-923: PUBLISHED WORKS 2002 PT 1	
A. kasiaemilia1 infringement 249. On or about September 4, 2013, Rosen discovered that a seller by the name of “kasiaemilia1” had made and posted an unauthorized copy of one of Rosen’s Natalia Sokolova photographs (Work 29) on eBay.com (eBay Listing No. 290969872836). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on	Disputed. Please see eBay’s response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the

1 Purported Uncontroverted Fact	eBay's Response
2 eBay.com on September 4, 2013 are 3 attached to Rosen's Declaration as 4 Exhibits 68 and 69. Rosen Decl., ¶ 5 253. 6	use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.
7 250. On or about September 8, 2013 8 (eBay Listing No. 290973472797), 9 September 14, 2013 (eBay Listing 10 No. 290977784427), September 23, 11 2013 (eBay Listing No. 12 290982319241), October 1, 2013 13 (eBay Listing No. 290987012062), 14 October 7, 2013 (eBay Listing No. 15 290991089101), October 14, 2013 16 (eBay Listing No. 290993511233), 17 October 19, 2013 (eBay Listing No. 18 290997408595), October 24, 2013 19 (eBay Listing No. 291002131018), 20 October 31, 2013 (eBay Listing No. 21 291006862414), November 8, 2013 22 (eBay Listing No. 291010799137), 23 November 13, 2013 (eBay Listing 24 No. 291016057083), November 20, 25 2013 (eBay Listing No. 26 291021159985), November 28, 27	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay's website on the date alleged.

Purported Uncontroverted Fact	eBay's Response
2013 (eBay Listing No. 291026379897), December 9, 2013 (eBay Listing No. 291033831397) and December 16, 2013 (eBay Listing No. 291038568540), Rosen discovered that a seller by the name of "kasiaemilia1" had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 29) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements. Rosen Decl., ¶ 254.	
251. The last known date that the September 4 (eBay Listing No. 290969872836), September 8 (eBay Listing No. 290973472797), September 14 (eBay Listing No. 290977784427), September 23 (eBay Listing No. 290982319241), October 1 (eBay Listing No. 290987012062),	Disputed. The listings referenced in the exhibits show listings that ended, and not "active and available" as Plaintiff alleges, and because Plaintiff fails to provide evidence related to the listings referenced in the paragraph.

Purported Uncontroverted Fact	eBay's Response
1 2 October 7 (eBay Listing No. 3 290991089101), October 14 (eBay 4 Listing No. 290993511233), 5 October 19 (eBay Listing No. 6 290997408595), October 24 (eBay 7 Listing No. 291002131018), 8 October 31 (eBay Listing No. 9 291006862414), November 8 (eBay 10 Listing No. 291010799137), 11 November 13 (eBay Listing No. 12 291016057083) listings remained 13 active and available was November 14 20, 2013. November 20 (eBay 15 Listing No. 291021159985), 16 November 28 (eBay Listing No. 17 291026379897) listings were last 18 known to be active on December 19 13, 2013. True and correct copies of 20 September 4 and November 28 21 listings as they existed on eBay.com 22 on November 20, December 13 are 23 attached to Rosen's Declaration as 24 Exhibits 70 and 71. Rosen Decl., ¶ 25 255.	

Purported Uncontroverted Fact	eBay's Response
<p>252. It is unknown when eBay finally removed the December 16 (eBay Listing No. 291038568540) and all of the listings as it has failed to produce such documents in discovery. Based on the information contained in eBay Exhibit A and eBay Exhibit B, it appears that eBay removed the October 7 (eBay Listing No. 290991089101) (see eBay Exhibit B) listing on October 8 and deliberately reposted it on October 9 (see eBay Exhibit A). Rosen Decl., ¶ 256.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p> <p>Listing no. 291038568540 was a magazine listing. eBay did not take down the listing because it believed that the seller, in offering an old magazine for sale, had made a fair use of the images contained in the listing. The listing was administratively ended on December 20, 2013 for policy reasons unrelated to Rosen's NOCI. <i>See</i> Taylor Opp. Decl. ¶ 12.</p> <p>Disputed. Listing no. 290991089101 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on October 8, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Amy Weber. Plaintiff is registered with the VeRO Program as having authority to request VeRO takedowns on Ms. Weber's behalf. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the</p>

Purported Uncontroverted Fact	eBay's Response
	images contained in the listing, which offered an old magazine for sale. eBay believes that sellers have a right to accurately depict the items they are offering for sale, and that potential buyers have a right to see the items they are considering purchasing. <i>See</i> Taylor Opp. Decl. ¶ 4.
WORK 30: NATALIA SOKOLOVA: VA 1-230-923: PUBLISHED WORKS 2002 PT 1	
A. kasiaemilia1 infringement 253. On or about September 4, 2013, Rosen discovered that a seller by the name of "kasiaemilia1" had made and posted an unauthorized copy of one of Rosen's Natalia Sokolova photographs (Work 30) on eBay.com (eBay Listing No. 290969872836). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on September 4, 2013 are	Disputed. Please see eBay's response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Purported Uncontroverted Fact	eBay's Response
attached to Rosen's Declaration as Exhibits 68 and 69. Rosen Decl., ¶ 257.	magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.
254. On or about September 8 (eBay Listing No. 290973472797), September 14 (eBay Listing No. 290977784427), September 23 (eBay Listing No. 290982319241), October 1 (eBay Listing No. 290987012062), October 7 (eBay Listing No. 290991089101), October 14 (eBay Listing No. 290993511233), October 19 (eBay Listing No. 290997408595), October 24 (eBay Listing No. 291002131018), October 31 (eBay Listing No. 291006862414), November 8 (eBay Listing No. 291010799137), November 13 (eBay Listing No. 291016057083), November 20 (eBay Listing No. 291021159985), November 28 (eBay Listing No. 291026379897), December 9 (eBay Listing No.	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).

Purported Uncontroverted Fact	eBay's Response
<p>291033831397) and December 16 (eBay Listing No. 291038568540), 2013. Rosen discovered that a seller by the name of “kasiaemilia1” had again posted an auction on eBay.com with the same unauthorized copy of one of Rosen’s Natalia Sokolova photographs (Work 30) as was in the September 4, 2013 auction. Rosen reported the infringements to eBay, but it failed to remove the infringements. Rosen Decl., ¶ 258.</p>	
<p>255. The last known date that the September 4 (eBay Listing No. 290969872836), September 8 (eBay Listing No. 290973472797), September 14 (eBay Listing No. 290977784427), September 23 (eBay Listing No. 290982319241), October 1 (eBay Listing No. 290987012062), October 7 (eBay Listing No. 290991089101), October 14 (eBay</p>	Disputed. The listings referenced in the exhibits show listings that ended, and not “active and available” as Plaintiff alleges, and because Plaintiff fails to provide evidence related to the listings referenced in the paragraph.

1 Purported Uncontroverted Fact	eBay's Response
2 Listing No. 290993511233), 3 October 19 (eBay Listing No. 4 290997408595), October 24 (eBay 5 Listing No. 291002131018), 6 October 31 (eBay Listing No. 7 291006862414), November 8 (eBay 8 Listing No. 291010799137), 9 November 13 (eBay Listing No. 10 291016057083) listings remained 11 active and available was November 12 20, 2013. The November 20 (eBay 13 Listing No. 291021159985) and 14 November 28 (eBay Listing No. 15 291026379897) listings were last 16 known to be active on December 17 13, 2013. True and correct copies of 18 September 4 and November 28 19 listings as they existed on eBay.com 20 on November 20, December 13 are 21 attached to Rosen's Declaration as 22 Exhibits 70 and 71. Rosen Decl., ¶ 23 259.	
24 256. It is unknown when eBay finally 25 removed the December 16 (eBay 26 Listing No. 291038568540) and all 27	Disputed. Please see eBay's response to ¶¶ 22.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Purported Uncontroverted Fact	eBay's Response
of the listings as it has failed to produce such documents in discovery. Rosen Decl., ¶ 260.	
257. Based on the info contained in eBay Exhibit A and eBay Exhibit B, It appears that eBay removed the October 7 (eBay Listing No. 290991089101) (see eBay Exhibit B) listing on October 8 and deliberately reposted it on October 9 (see eBay Exhibit A). Rosen Decl., ¶ 261.	Disputed. Listing no. 290991089101 was a magazine listing. One of eBay's VeRO agents mistakenly took down the listing on October 8, 2013, and recorded incorrectly that the listing infringed copyrights belonging to Amy Weber. Plaintiff is registered with the VeRO Program as having authority to request VeRO takedowns on Ms. Weber's behalf. Once the mistake was discovered, VeRO restored the listing, since eBay believed that the seller had made a fair use of the images contained in the listing, which offered an old magazine for sale. eBay believes that sellers have a right to accurately depict the items they are offering for sale, and that potential buyers have a right to see the items they are considering purchasing. <i>See</i> Taylor Opp. Decl. ¶ 4.

Purported Uncontroverted Fact	eBay's Response
XXXIX. WORK 31: JERI RYAN: VA 1-231-030: PUBLISHED WORKS 1998 PT 1	
A. konofrio79 infringements <p>258. On or about October 31, 2013, Rosen discovered that a seller by the name of "konofrio79" had posted an unauthorized copy of an copy of an 8x10 photo print utilizing of one of Rosen's Jeri Ryan photographs (Work 31) for sale on eBay.com (eBay Listing No. 321238934384) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed. True and correct copies of the infringement(s) as they existed on eBay.com on October 31, 2013 are attached to Rosen's Declaration as Exhibit 134 and of the Jpeg image file as it existed on eBay image servers on October 31, 2013 is attached to Rosen's Declaration as</p>	<p>Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Disputed. Plaintiff provides no evidence that the image referenced in the paragraph is the same as the image from the removed listing. Further disputed because there is no evidence that Plaintiff reported any image to eBay prior to October 31, 2013.</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. Decl. ¶ 5.</p>

Purported Uncontroverted Fact	eBay's Response
Exhibit 135. Rosen Decl., ¶ 262.	
<p>259. The last known date that the image url/link remained active and available was November 20, 2013. A true and correct copy of the image as it was still active on eBay's servers on November 20, 2013 is attached to Rosen's Declaration as Exhibit 136. Rosen Decl., ¶ 263.</p>	<p>Disputed. Please see eBay's response to ¶ 1.</p> <p>Disputed. Plaintiff provides no evidence that the image referenced in the paragraph is the same as the image from the removed listing.</p> <p>Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.</p>
<p>260. It is unknown when eBay finally removed the image as it has failed to produce such documents in discovery. Rosen Decl., ¶ 264.</p>	<p>Disputed. Please see eBay's response to ¶ 22.</p>
WORK 32: ERIKA ELENIAK: VAU692-231: ERIKA ELENIAK	
A. bluefly infringements	
<p>261. On or about November 17, 2013, Rosen discovered that a seller by the name of "bluefly64" had posted an unauthorized copy of an copy of</p>	<p>Disputed. Please see eBay's response to ¶¶ 1, 4. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p>

Purported Uncontroverted Fact	eBay's Response
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 <p>an 8x10 photo print utilizing of one of Rosen's Erika Eleniak photographs (Work 32) for sale on eBay.com (eBay Listing No. 121214978174) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay, but the Works were not removed expeditiously. True and correct copies of the infringement(s) as they existed on eBay.com on November 17, 2013 are attached to Rosen's Declaration as Exhibits 137 and of the Jpeg image file as it existed on eBay image servers on November 17, 2013 is attached to Rosen's Declaration as Exhibit 138. Rosen Decl., ¶ 265.</p>	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).
262. The last known date that the image url/link remained active and available was November 20, 2013. A true and correct copy of the image as it was still active on	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. It is not clear what "image

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
eBay's servers on November 20, 2013 is attached to Rosen's Declaration as Exhibit 139. Rosen Decl., ¶ 266.	url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to November 20, 2013.	
263. Because Rosen feared that the Work would not be removed expeditiously, Rosen placed a bid and subsequently won the auction (purchased the Work). Since it still had not been removed hours later, Rosen subsequently paid for the Work by PayPal. True and correct copies of the sales Notifications from eBay on November 17 and 18, 2013 are attached to Rosen's Declaration as Exhibits 140, 141 and 142. Rosen Decl., ¶ 267.	Undisputed that Plaintiff sent eBay a NOCI on the afternoon of Sunday, November 17, 2014. On Monday morning, November 18, 2014, eBay employee Larry Taylor directed the VeRO team to process Plaintiff's NOCI as quickly as possible, and the reported listing was taken down within the hour, less than twenty-four (24) hours after Plaintiff had sent the NOCI. See eBay 56-1 ¶ 91; Taylor SJ Decl. ¶¶ 22-25 & Exs. E-G.	
264. Sometime thereafter, eBay finally took steps to remove/disable the auction listing and notified Rosen that it was "no longer available." The notification did not specifically list the reason why the listing was no longer available and	Disputed. eBay expeditiously removed the listing within twenty-four hours of receiving Plaintiff's notice. See eBay 56-1 ¶ 90-91, Taylor SJ Decl. ¶ 22-25, & Exs E-G.	

1 Purported Uncontroverted Fact	eBay's Response
2 also indicated that the Work would 3 still be delivered (since it was paid 4 for). True and correct copies of the 5 Notification from eBay on 6 November 18, 2013 are attached to 7 Rosen's Declaration as Exhibit 143. 8 Rosen Decl., ¶ 268.	
9 265. eBay failed to terminate the sale 10 and/or return the money paid for the 11 Work upon termination of the 12 listing. Rosen also never received 13 the Work from the seller. Rosen 14 Decl., ¶ 269.	Disputed. Plaintiff was refunded his payment for Listing No. 121214978174 on December 4, 2013 via PayPal. See Baldwin Opp. Decl. ¶ 31. Disputed. On or about December 3, 2013, Plaintiff opened a case in eBay's Resolution Center regarding his purchase. eBay sent him an email stating "if we don't hear from you by Jan 02, 2014, we'll assume that things have been resolved." See Rosen-00980-81. Plaintiff has produced no evidence to indicate that he ever followed up with eBay after December 3, 2013 or before January 2, 2014.
25 266. When Rosen followed up on 27 events to see what steps if any were	Disputed. Plaintiff fails to provide any evidence that the image he alleges was

1 Purported Uncontroverted Fact	eBay's Response
2 available for a buyer to deal with a 3 non-delivered Work, Rosen 4 discovered that eBay kept a kind of 5 link for the buyer to be able to deal 6 with any issues. When Rosen 7 opened up that link, Rosen found 8 information on the Work and a 9 picture of the Work still active on 10 eBay.com. True and correct copies 11 of the link Rosen found showing the 12 photo on December 3, 2013 is 13 attached to Rosen's Declaration as 14 Exhibit 144. Rosen Decl., ¶ 270. 15	live on eBay's servers on the date alleged.
16 267. On or about November 20, 2013 17 about two days after the listing was 18 removed from eBay, Rosen was still 19 able to find the image related to the 20 listing via a Google search and the 21 image on eBay's servers. True and 22 correct copies of the google search 23 showing the photo on November 20, 24 2013 are attached to Rosen's 25 Declaration as Exhibit 145, 146, and 26 147. Rosen Decl., ¶ 271. 27	Disputed. Plaintiff fails to provide any evidence that any images appearing in Rosen Decl. Exhibit 145 ever appeared on eBay's website. Disputed. Plaintiff fails to provide any evidence that the image he alleges was live on eBay's servers. At his deposition, Plaintiff explained how he copied and saved PDF files of each listing, including any images and its URL, and stored them on his computer. Plaintiff testified that he

Purported Uncontroverted Fact	eBay's Response
	<p>searches for infringements of his photographs on various computers, and that he does not always clear the cache of the computers from which he searches, so he has no way of knowing whether, at any given time, he is accessing images from eBay's servers or stored local copies of such images. <i>See</i> eBay 56-1, Rosen Dep. annexed as Ex. B to the Singer SJ Decl. at 161:24-165:25, 187:17-189:20, 247:3-248:8; Singer Opp. Decl. Ex. G at 192:6-193:25.</p> <p>Further disputed because Google's servers create thumbnails and cache copies of images while a listing is still active but will retain the images even after a listing has been removed. The cache and thumbnail are retained on Google's own servers and eBay does not have control over the image. Spickler Opp. Decl. ¶ 16-19.</p>
268. It is unknown when eBay finally removed the image as it has failed to produce such documents in	Disputed. Please see eBay's response to ¶ 22.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
	discovery. Rosen Decl., ¶ 272.	
	269. eBay received a financial benefit this sale and/or listing. (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 8 on the 7th page of Exhibit B. Rosen Decl., ¶ 273.	Disputed. eBay took down Listing ID 121214978174 in response to a NOCI from Plaintiff. Because eBay had ended the listing under its VeRO Program, eBay cancelled any pending transactions, and refunded the fees for the item. eBay does not collect fees from the buyers of items that are sold on eBay's website, and so eBay would have received no direct or indirect financial benefit from any such payment. <i>See</i> Baldwin Opp. Decl. ¶ 31.
WORK 33: ANNA KOURNIKOVA: VA 1-239-761: ANNA KOURNIKOVA 15		
A. 123-packfan infringements 270. On or about September 5, 2013, Rosen discovered that a seller by the name of "123-packfan" had posted or previously posted an unauthorized copy of an 8x10 photo print utilizing of one of Rosen's Anna Kournikova photographs (Work 33) for sale on eBay.com (eBay Listing No. 390652989896)		Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. Disputed. Plaintiff provides no evidence that the image shown in Rosen Decl. Exhibit 150 is the same as the image from the removed listing shown in Rosen Decl. Exhibit 148. In fact, the two images are

Purported Uncontroverted Fact	eBay's Response
<p>and had also made and posted an unauthorized copy (ies) of said print. Rosen reported the infringements to eBay and the listing was removed, but the unauthorized image files were not removed from eBay's servers and continued to be displayed in eBay searches for some time thereafter.</p> <p>True and correct copies of the infringement(s) as they existed on eBay.com on September 5, 2013 are attached to Rosen's Declaration as Exhibit 150 and an annotated excerpt as still shown in eBay searches on October 2, 2013 as Exhibit 148. Rosen Decl., ¶ 274.</p>	<p>from different listings. <i>Compare id.</i> Ex. 150 (listing titled "... Anna Kournikova 4091) with <i>id.</i> Ex. 148 (listing titled "... Anna Kournikova 2044").</p> <p>Further disputed because Plaintiff fails to provide any evidentiary support for the conclusory statement that "the unauthorized photos were not removed from eBay's servers."</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. Decl. ¶ 5.</p>
<p>271. On or about September 5, 2013, Rosen discovered that a seller by the name of "123-packfan" had sold at least one previously posted unauthorized copy of an 8x10 photo print utilizing of one of Rosen's Anna Kournikova photographs</p>	<p>Disputed. Please see eBay's response to ¶ 1.</p> <p>Disputed. Plaintiff provides no evidence that the image referenced in the paragraph is the same as the image from the removed listing.</p> <p>Further disputed as to relevance because</p>

Purported Uncontroverted Fact	eBay's Response
(Work 33). True and correct copies of the showing the sold Work (eBay Listing No. 161063672817) as they existed on eBay.com on September 5, 2013 are attached to Rosen's Declaration as Exhibit 149 and an annotated excerpt as still shown in eBay searches on October 2, 2013 as Exhibit 150. Rosen Decl., ¶ 275.	Plaintiff makes no showing that he ever reported the alleged infringement he describes in ¶ 271, and thus no showing that eBay was ever placed on notice of such alleged infringement.
272. eBay received a financial benefit from the sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 3 on the 1st page of Exhibit B. Rosen Decl., ¶ 276.	Disputed. eBay took down Listing ID 161063672817 in response to a NOCI from Plaintiff. Plaintiff submitted the NOCI on or about September 6, 2013, about three weeks after the item had been sold on July 17, 2013. Because the item had been sold before Plaintiff submitted his NOCI, eBay could not cancel the transaction. eBay refunded all fees for the item, including the insertion fee, any applicable listing upgrade or supplemental service fees, and any final value fees. <i>See</i> Baldwin Opp. Decl. 23.
273. It is unknown when eBay finally removed the images as it has failed	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
to produce such documents in discovery. Rosen Decl., ¶ 277.	
WORK 34: ANNA KOURNIKOVA: VA 1-239-767: ANNA KOURNIKOVA 1	
<p>A. *madonna* infringements</p> <p>274. On or about December 2, 2013, Rosen discovered that a seller by the name of “*madonna*” was selling a magazine that contained unauthorized copies of one of Rosen’s Anna Kournikova photographs (Work 34) and had made and posted unauthorized copy(ies) such photographs on eBay.com (eBay Listing No. 271335458444). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the infringement(s) as they existed on eBay.com on December 2, 2013 are attached to Rosen’s Declaration as Exhibits 152. A copy of the Jpeg image file as it existed on eBay image servers on December 2, 2013 is attached to</p>	<p>Disputed. Please see eBay’s response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29</p>

1 Purported Uncontroverted Fact	eBay's Response
2 Rosen's Declaration as Exhibit 153. 3 Rosen Decl., ¶ 278. 4	
5 275. On or about December 30, 2013, 6 Rosen discovered that the listing 7 (271335458444) still had not been 8 removed and was still active, but 9 without an image. A true and 10 correct copy of the infringement(s) 11 as it existed on eBay.com on 12 December 30, 2013 is attached to 13 Rosen's Declaration as Exhibit 57. 14 Rosen Decl., ¶ 279.	Disputed. Listing no. 271335458444 was a magazine listing that was active between November 30, 2013 and December 30, 2013 but Plaintiff's Exhibit 57 does not appear to contain any reference to listing no. 271335458444. <i>See Taylor Opp. Decl. ¶ 16.</i>
15 276. On or about January 2, 2014, 16 Rosen discovered that a seller by 17 the name of “*madonna*” was 18 selling a magazine that contained 19 unauthorized copies of one of 20 Rosen's Anna Kournikova 21 photographs (Work 34) and had 22 made and posted unauthorized 23 copy(ies) of such photographs on 24 eBay.com (eBay Listing No. 25 271335458444). Rosen reported the 26 infringement to eBay, but it failed to 27	Disputed. Please see eBay's response to ¶¶ 1, 5. Disputed. It is unclear what is referred to in paragraph 276, because the paragraph references listing 271335458444, but Rosen Decl. Exhibits 154 and 155 address listing 271360287150. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an

1 Purported Uncontroverted Fact	eBay's Response
2 remove the infringement. True and 3 correct copies of the notice and 4 infringement(s) as they existed on 5 eBay.com on January 2, 2014 are 6 attached to Rosen's Declaration as 7 Exhibits 154 and 155. Rosen Decl., 8 ¶ 280.	infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29.
9 277. After sending the January 2, 10 2014 notice, Rosen also had some 11 communications regarding the 12 infringing activities and the removal 13 of the image in the previous listing. 14 True and correct copies of Rosen's 15 January 2, 2014 emails with eBay 16 are attached to Rosen's Declaration 17 as Exhibit 156. Rosen Decl., ¶ 281.	Disputed. It is unclear what is referred to in paragraph 277. Further disputed because paragraph 277 purports to set out legal conclusions such as that any activity was "infringing."
19 278. Based on the email to the seller 20 produced by eBay, it is clear that 21 eBay did not take steps to remove 22 either the December 2, 2013 or 23 January 2, 2014 listings until 24 January 9, 2014. True and correct 25 copies of the email to the seller on 26 January 9, 2014 are attached to	Disputed. Rosen Decl. Exhibit 158 was not included in Plaintiff's filing and it is therefore impossible for eBay to understand what Plaintiff refers to in paragraph 278. Further disputed because paragraph 278 purports to set out a legal conclusion and/or an unsupported conclusion

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
Rosen's Declaration as Exhibit 158. Rosen Decl., ¶ 282.	regarding what actions eBay may or may not have taken.	
279. On or about March 20, 2014, Rosen discovered that a seller by the name of “*madonna*” was selling a magazine that contained unauthorized copies of one of Rosen’s Anna Kournikova photographs (Work 34) and had made and posted unauthorized copy(ies) such photographs on eBay.com (eBay Listing No. 360882096735). Rosen reported the infringement to eBay and it removed the listing in about 18 hours. True and correct copies of the notice and infringement(s) as they existed on eBay.com on March 20, 2014 are attached to Rosen’s Declaration as Exhibits 159. Rosen Decl., ¶ 283.	Disputed. Please see eBay’s response to ¶ 5. Disputed because paragraph 279 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013. It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29	
B. Unauthorized images that had been posted on eBay were on Terapeak 280. On or about June 24, 2014, while		

Purported Uncontroverted Fact	eBay's Response
<p>1 doing research on this case on 2 Terapeak, Rosen discovered that a 3 seller by the name of “*madonna*” 4 had offered for sale for the fourth 5 time, a magazine that contained 6 unauthorized copies of one of 7 Rosen’s Anna Kournikova 8 photographs (Work 34) and had 9 made and posted an unauthorized 10 copy (ies) of this photograph on 11 eBay.com (eBay Listing No. 12 271439560737). Rosen reported the 13 infringement to eBay and it 14 removed the listing. True and 15 correct copies of the notice and 16 infringement(s) as they existed on 17 eBay.com on June 24, 2014 are 18 attached to Rosen’s Declaration as 19 Exhibits 159 and 160 and as they 20 appeared on Terapeak with images 21 on June 24, 2014 are attached to 22 Rosen’s Declaration as Exhibit 161. 23 Rosen Decl., ¶ 284.</p>	<p>Disputed because paragraph 280 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013.</p> <p>Further disputed because it is unclear what Plaintiff refers to here, as paragraph 280 purports to address listing 271439560737, but Rosen Decl. Exhibit 159 addresses listing 360882096735.</p> <p>Further disputed because it is unclear if Plaintiff is alleging that he saw any infringing item on eBay’s website, and what alleged infringement he purports to have reported to eBay.</p>

Purported Uncontroverted Fact	eBay's Response
281. On or about June 24, 2014, while 3 doing research on this case on 4 Terapeak, Rosen also discovered the 5 December 2, 2013 listing (eBay 6 Listing No. 271335458444) listing 7 on Terapeak. True and correct 8 copies of the December 2, 2013 listing as they appeared on Terapeak with images on June 24, 2014 are attached to Rosen's Declaration as Exhibit 162. Rosen Decl., ¶ 285. 13	Disputed because it is unclear what the paragraph is referring to. Disputed because paragraph 281 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013.
282. It is unknown when eBay finally removed the images as it has failed to produce such documents in discovery. Rosen Decl., ¶ 286. 17	Disputed. Please see eBay's response to ¶ 22.
WORK 35: ANNA KOURNIKOVA: VA 1-239-764: ANNA KOURNIKOVA 10	
20 A. *madonna* infringements 21 22 283. On or about December 2, 2013, Rosen discovered that a seller by 23 the name of “*madonna*” was 24 selling a magazine that contained 25 unauthorized copies of, and had 26 made and posted, an unauthorized 27	Disputed. Please see eBay's response to ¶¶ 1, 5. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue. Disputed. Plaintiff fails to provide any

Purported Uncontroverted Fact	eBay's Response
<p>copy(ies) of one of Rosen's Anna Kournikova photographs (Work 34) on eBay.com (eBay Listing No. 271335458444). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the infringement(s) as they existed on eBay.com on December 2, 2013 are attached to Rosen's Declaration as Exhibits 152 and of the Jpeg image file as it existed on eBay image servers on December 2, 2013 is attached to Rosen's Declaration as Exhibit 153.</p> <p>Rosen Decl., ¶ 287.</p>	<p>evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>It is undisputed that Plaintiff reported the alleged infringement to eBay and that eBay did not take down the magazine listing. It is disputed that there was an infringement and it was determined that the VeRO team would not take down listings offering magazines for re-sale where Mr. Rosen acknowledged that the use of his photographs within the magazines was authorized. <i>See</i> Taylor SJ Decl. at ¶¶ 27-29</p>
<p>284. On or about December 30, 2013, Rosen discovered that the listing (271335458444) still had not been removed was still active, but that the image was not displayed with the listing. A true and correct copy of the infringement(s) as it existed on eBay.com on December 30, 2013 is attached to Rosen's Declaration</p>	<p>Disputed Please see eBay's response to ¶ 275. It is unclear what paragraph 284 is referring to as the exhibit referenced is for listing 400743088259 not listing 271335458444.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Purported Uncontroverted Fact	eBay's Response
as Exhibit 57. Rosen Decl., ¶ 288.		
285. On or about January 2, 2014, Rosen discovered that a seller by the name of “*madonna*” was selling a magazine containing unauthorized copies of, and had made and posted, unauthorized copy(ies) of one of Rosen’s Anna Kournikova photographs (Work 34) on eBay.com (eBay Listing No. 271335458444). Rosen reported the infringement to eBay, but it failed to remove the infringement. True and correct copies of the notice and infringement(s) as they existed on eBay.com on January 2, 2014 are attached to Rosen’s Declaration as Exhibits 154 and 155. Rosen Decl., ¶ 289.	Disputed. Please see eBay’s response to ¶¶ 1, 5. Disputed because it is unclear what the paragraph is referring to. The paragraph references “Work 34” but the section appears to address “Work 35.” In addition, the paragraph references listing 271335458444, but Rosen Decl. Exhibits 154 and 155 address 271360287150. Disputed because paragraph 285 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013.	
286. After sending the January 2, 2014 notice, Rosen also had some communications with eBay regarding the infringing activities and the removal of the image in the	Disputed because paragraph 286 purports to set out legal conclusions such as that any activity was “infringing.” Further disputed because it is unclear	

1 Purported Uncontroverted Fact	eBay's Response
2 previous listing. True and correct 3 copies of Rosen's January 2, 2014 4 emails with eBay are attached to 5 Rosen's Declaration as Exhibit 156. 6 Rosen Decl., ¶ 290.	what is referred to in paragraph 286.
7 287. Based on the email to the seller 8 produced by eBay, it is clear that 9 eBay did not take steps to remove 10 either the December 2, 2013 or 11 January 2, 2014 listings until 12 January 9, 2014. True and correct 13 copies of the email to the seller on 14 January 9, 2014 are attached to 15 Rosen's Declaration as Exhibit 158. 16 Rosen Decl., ¶ 291.	Disputed. Please see eBay's response to ¶ 278.
18 288. On or about March 20, 2014, 19 Rosen discovered that a seller by 20 the name of “*madonna*” was 21 selling a magazine containing 22 unauthorized copies of, and had 23 made and posted an unauthorized 24 copy(ies) of, one of Rosen's Anna 25 Kournikova photographs (Work 34) 26 on eBay.com (eBay Listing No. 27	Undisputed that on or about March 20, 2014, eBay received a NOCI concerning listing no. 360882096735, which was a magazine listing. As a courtesy to the seller, because of the pending litigation, eBay administratively ended the listing on March 31, 2014. <i>See Taylor Opp.</i> Decl. ¶ 24. Disputed because paragraph 288 appears

1 Purported Uncontroverted Fact	eBay's Response
2 3 4 5 6 7 8 9 10 360882096735). Rosen reported the infringement to eBay and it removed the listing in about 18 hours. True and correct copies of the notice and infringement(s) as they existed on eBay.com on March 20, 2014 are attached to Rosen's Declaration as Exhibit 159. Rosen Decl., ¶ 292.	to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013. Disputed because it is unclear what is referred to in paragraph 288. The paragraph references "Work 34" but the section appears to address "Work 35."
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 289. On or about June 24, 2014, while doing research on this case on Terapeak, Rosen discovered that a seller by the name of "*madonna*" had offered for sale for the 4th time, a magazine containing unauthorized copies of, and had made and posted an unauthorized copy (ies) of, one of Rosen's Anna Kournikova photographs (Work 34) on eBay.com (eBay Listing No. 271439560737). Rosen reported the infringement to eBay and it removed the listing. True and correct copies of the notice and	Disputed because paragraph 289 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013. Further disputed because it is unclear if Plaintiff is alleging that he saw any infringing item on eBay's website, and what alleged infringement he purports to have reported to eBay. Disputed because it is unclear what is referred to in paragraph 288. The paragraph references "Work 34" but the section appears to address "Work 35."

1 Purported Uncontroverted Fact	eBay's Response
2 infringement(s) as they existed on 3 eBay.com on June 24, 2014 are 4 attached to Rosen's Declaration as 5 Exhibits 159 and 160 and as they 6 appeared on Terapeak with images 7 on June 24, 2014 are attached to 8 Rosen's Declaration as Exhibit 161. 9 Rosen Decl., ¶ 293.	
10 290. On or about June 24, 2014, while 11 doing research on this case on 12 Terapeak, Rosen also discovered the 13 December 2, 2013 (eBay Listing 14 No. 271335458444) listing on 15 Terapeak. True and correct copies 16 of the December 2, 2013 listing as 17 they appeared on Terapeak with 18 images on June 24, 2014 are 19 attached to Rosen's Declaration as 20 Exhibit 162. Rosen Decl., ¶ 294.	Disputed because paragraph 290 appears to address an alleged infringement that took place months after the time period that is relevant to the instant action, which was filed on September 16, 2013. Further disputed because it is unclear if Plaintiff is alleging that he saw any infringing item on eBay's website, and what alleged infringement he purports to have reported to eBay.
22 291. It is unknown when eBay finally 23 removed the images as it has failed 24 to produce such documents in 25 discovery. Rosen Decl., ¶ 295.	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
WORK 36: GENA LEE NOLIN: VA 1-274-965: GENA LEE NOLIN 3	
<p>A. hotcorner2980 infringements</p> <p>292. On or about December 13, 2013, Rosen discovered that a seller by the name of "hotcorner2980" had posted four (4) unauthorized copies of one of Rosen's Gena Lee Nolin photographs (Work 36) on eBay.com (eBay Listing No. 111235524767). Rosen reported the infringements to eBay and the listing was removed but the unauthorized photos were not removed from eBay's servers. True and correct copies of the infringement(s) as they existed on eBay.com on November 24, 2013, are attached to Rosen's Declaration as Exhibit 167. Rosen Decl., ¶ 296.</p>	<p>Disputed. Please see eBay's response to ¶ 1. Plaintiff has failed to provide any evidence that he owns the copyright to the image at issue.</p> <p>Disputed. Plaintiff provides no evidence that the listings referenced appeared on eBay's website on the date alleged.</p> <p>Disputed because Plaintiff fails to provide any evidentiary support for the conclusory statement that "the unauthorized photos were not removed from eBay's servers."</p> <p>Further disputed because the image referenced in Rosen's Declaration as Exhibit 167 is not an image of Gena Lee Nolin.</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it down. <i>See</i> Baldwin Opp. Decl. ¶ 5.</p>

1 Purported Uncontroverted Fact	eBay's Response
2 3 4 5 6 293. It is unknown when eBay finally removed the images as it has failed to produce such documents in discovery. Rosen Decl., ¶ 297.	7 8 9 10 11 12 13 Disputed. Please see eBay's response to ¶ 22.
7 8 9 10 11 12 13 294. eBay received a financial benefit from this sale and/or listing(s). (See eBay Exhibit B, Exhibit 2 to Dion- Kindem Declaration. This listing is reflected on row 6 on page 9 of Exhibit B. Rosen Decl., ¶ 298.	14 15 16 17 18 19 20 21 22 23 24 25 26 27 Disputed. eBay took down Listing ID 111235524767 in response to a NOCI from Plaintiff. Because the listing had been ended by eBay under its VeRO Program, eBay refunded the fees for the item, amounting to \$US 0.10. <i>See</i> Baldwin Opp. Decl. ¶ 37.
14 15 16 17 18 19 20 21 22 23 24 25 26 27 B. Worthpoint Infringement 295. On or about December 11, 2013, Rosen discovered that Worthpoint had posted on its website, Worthpoint.com, an unauthorized copy of an 8x10 photo print utilizing of one of Rosen's Gena Lee Nolin photographs (Work 36) that had been offered for sale and sold on eBay.com. Based on the information contained on both worthpoint.com and eBay.com, it is	Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Disputed. Plaintiff provides no evidentiary support for the conclusory statement that "it is apparent to Rosen that eBay unlawfully licensed the image to Terapeak, which in turn licensed the image to Worthpoint, and that eBay had sold the Work."

Purported Uncontroverted Fact	eBay's Response
apparent to Rosen that eBay unlawfully licensed the image to Terapeak, which in turn licensed the image to Worthpoint, and that eBay had sold the Work. True and correct copies of the infringement(s) as they existed on worthpoint.com on December 11, 2013, along with copies of Worthpoint's Work removal request form and press release showing that eBay licenses photos to Worthpoint via its apparent agent Terapeak (formally Advanced Ecommerce Research Systems) are attached to Rosen's Declaration as Exhibits 168, 169 and 170. Rosen Decl., ¶ 299.	Disputed because paragraph 295 purports to set out unsupported legal conclusions which courts do not consider on a motion for summary judgment. <i>See Andrews Farms</i> , 693 F. Supp. 2d at 1167 (refusing to consider plaintiff's statement of "fact" on summary judgment because it was a "a legal conclusion that [was] unsupported by legal authority or analysis").

WORK 37: GENA LEE NOLIN: VA 1-230-952: GENA LEE NOLIN 27

A. Worthpoint infringements

296. On or about November 4, 2013,
Rosen discovered that
Worthpoint.com had posted an
unauthorized copy of a copy of an
8x10 photo print utilizing of one of

Disputed. Please see eBay's response to
¶ 1. Plaintiff has failed to provide any
evidence that he owns the copyright to
the image at issue.

Purported Uncontroverted Fact	eBay's Response
<p>Rosen's Gena Lee Nolin photographs (Work 37) that had been offered for sale and sold on eBay.com. Based on the information contained on both worthpoint.com and eBay.com, it is apparent to Rosen that eBay unlawfully licensed the image to Terapeak, which in turn licensed the image to Worthpoint, and that eBay had sold the Work. True and correct copies of the infringement(s) as they existed on worthpoint.com on November 4, 2013, along with copies of Worthpoint's Work removal request form and press release showing that eBay licenses photos to Worthpoint via its apparent agent Terapeak (formally Advanced Ecommerce Research Systems) are attached to Rosen's Declaration as Exhibits 171, 169 and 170. Rosen Decl., ¶ 300.</p>	<p>Disputed. Plaintiff provides no evidentiary support for the conclusory statement that "it is apparent to Rosen that eBay unlawfully licensed the image to Terapeak, which in turn licensed the image to Worthpoint, and that eBay had sold the Work."</p> <p>Further disputed because Plaintiff provides no evidence that the image appearing in Rosen Decl. Exhibit 169 is the same as, or connected in any way to, any image(s) appearing in connection with any listing at issue in the instant litigation.</p> <p>Disputed because paragraph 296 purports to set out unsupported legal conclusions which courts do not consider on a motion for summary judgment. <i>See Andrews Farms</i>, 693 F. Supp. 2d at 1167 (refusing to consider plaintiff's statement of "fact" on summary judgment because it was a "a legal conclusion that [was] unsupported by legal authority or analysis").</p>

Purported Uncontroverted Fact	eBay's Response
	<p>Further disputed because Rosen Decl. Exhibits 170 and 171 constitute inadmissible hearsay. <i>In re Slatkin</i>, 310 B.R. 740, 744 (C.D. Cal. 2004) aff'd, 222 F. App'x 545 (9th Cir. 2007) ("Inadmissible hearsay cannot be considered on a motion for summary judgment.")</p>
WORK 38: ALI LANDRY: VAU660-263: ALI LANDRY	
<p>A. powerangers infringements</p> <p>297. On or about November 24, 2013, Rosen discovered that a seller by the name of "powerangers" had posted an unauthorized copy of an copy of an 8x10 photo print utilizing of one of Rosen's Ali Landry photographs (Work 38) for sale on eBay.com (eBay Listing No. 390712954996) and had also made and posted an unauthorized copy(ies) of said print. Rosen reported the infringements to eBay and the listing was removed, but the</p>	<p>Disputed. Please see eBay's response to ¶ 1, 4.</p> <p>Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s).</p> <p>Further disputed because Plaintiff fails to provide any evidentiary support for the conclusory statement that "the unauthorized photos were not removed from eBay's servers."</p> <p>Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it</p>

1 Purported Uncontroverted Fact	eBay's Response
2 unauthorized photos were not 3 removed from eBay's servers. True 4 and correct copies of the 5 infringement(s) as they existed on 6 eBay.com on October 31, 2013 are 7 attached to Rosen's Declaration as 8 Exhibits 162 and of the Jpeg image 9 file as it existed on eBay image 10 servers on October 31, 2013 is 11 attached to Rosen's Declaration as 12 Exhibit 163. Rosen Decl., ¶ 301.	down. <i>See</i> Baldwin Opp. Decl. ¶ 5.
13 298. The last known date that the 14 image url/link remained active and 15 available was December 12, 2013. 16 A true and correct copy of the 17 image as it was still active on 18 eBay's servers on December 12, 19 2013 is attached to Rosen's 21 Declaration as Exhibit 164. Rosen 22 Decl., ¶ 302.	Disputed. It is not clear what "image url/link" Plaintiff refers to and there is no evidence that Plaintiff reported any image url/link to eBay prior to December 12, 2013.
23 299. It is unknown when eBay finally 24 removed the image as it has failed 25 to produce such documents in 26 discovery. Rosen Decl., ¶ 303.	Disputed. Please see eBay's response to ¶ 22.

Purported Uncontroverted Fact	eBay's Response
300. eBay received a financial benefit from this sale and/or listing. (See eBay Exhibit B, Exhibit 2 to Dion-Kindem Declaration.) This listing is reflected on row 5 on the 8th page of Exhibit B. Rosen Decl., ¶ 304.	Disputed. eBay took down Listing ID 390712954996 in response to a NOCI from Plaintiff. Because the listing had been ended by eBay under its VeRO Program, eBay refunded fees for the item, amounting to \$US 0.05. See Baldwin Opp. Decl. ¶ 34.
WORK 39: ANNA KOURNIKOVA: VA 1-239-757: ANNA KOURNIKOVA 7	
A. historyofthegaRosen [sic] infringements 301. On or about December 11, 2013, Rosen discovered that a seller by the name of “historyofthegame” had posted an unauthorized copy of an 8x10 photo print utilizing of one of Rosen’s Anna Kournikova photographs (Work 39) for sale on eBay.com and had also made and posted an unauthorized copy(ies) of said print (eBay Listing No. 141138310798). Rosen reported the infringements to eBay and the listing was removed, but the unauthorized photos were not	Disputed. Please see eBay's response to ¶ 1. Disputed. Plaintiff fails to provide any evidence that the listings/exhibits referenced consist of or contain any of the same image(s). Further disputed because Plaintiff fails to provide any evidentiary support for the conclusory statement that “the unauthorized photos were not removed from eBay's servers.” Undisputed that Rosen reported the 8x10 photo listing to eBay and eBay took it

1 Purported Uncontroverted Fact	eBay's Response
2 removed from eBay's servers. True 3 and correct copies of the 4 infringement(s) as they existed on 5 eBay.com on December 11, 2013 6 are attached to Rosen's Declaration 7 as Exhibit 165 and of the Jpeg 8 image file as it existed on eBay 9 image servers on October 31, 2013 10 is attached to Rosen's Declaration 11 as Exhibit 166. Rosen Decl., ¶ 305. 12	down. See Baldwin Opp. Decl. ¶ 5.
13 302. It is unknown when eBay finally 14 removed the image as it has failed 15 to produce such documents in 16 discovery. Rosen Decl., ¶ 306. 17	Disputed. Please see eBay's response to ¶ 22.

18 Dated: October 3, 2014 WEIL, GOTSHAL & MANGES LLP

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20 By: s/R. Bruce Rich
R. Bruce Rich

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EBAY'S STATEMENT OF GENUINE
DISPUTES IN RESPONSE TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT